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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 48

ROSETTE SORGE SAVORGNAN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1949.

CERTIORARI GRANTED MAY 31, 1949.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No.

ROSETTE SORGE SAVORGNAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 9550

ROSETTE SORGE SAVORGNAN,

Plaintiff-Appellee,

vs.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE,

Defendants-Appellants.

Appeal from the District Court of the United States for the Western District of Wisconsin.

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1 RECORD OF PROCEEDINGS IN

UNITED STATES DISTRICT COURT

for Western District of Wisconsin.

At a term of the District Court of the United States for the Western District of Wisconsin, begun and held at the City of Madison, Wisconsin, in said District, on the first Tuesday of December, A. D. 1945, and on August 26, 1926, being one of the days of said term, proceedings were had as follows:

August 26, 1946, filed Petition for Declaratory Judgment, same being a paper in the case entitled:

"Rosette Sorge Savorgnan,
Plaintiff,
vs.
"The United States of America,
Defendant." } No. 1738-Civil

2 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1739) • •

PETITION FOR DECLARATORY JUDGMENT.

(Filed August 26, 1946. Herbert C. Hale, Clerk.)

The petitioner herein, by her attorneys, George P. Ruediger and Edgar M. Alstad, respectfully shows to the Court and alleges:

1. That she is a resident of the City of La Crosse, County of La Crosse, State and Western District of Wisconsin.

2. That on the 26th day of December, 1940, the petitioner married one Alessandro Savorgnan, an Italian national, but that at no time did the petitioner renounce her American citizenship.

3. That on the 28th day of June, 1946, the Hon. T. B.

Shoemaker, Acting Commissioner of the Immigration and Naturalization Service of the United States Department of Justice, advised the petitioner, on review of her citizenship status, as follows:

"The matter was considered by the Commissioner, and in part he ruled as follows: 'The question is a perplexing one; the answer is not clear. Administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with sureness until passed upon by the courts. Accordingly, the case should be decided against the claimant in the pending administrative proceedings. She may then seek judicial review if she so chooses.'

"You are at liberty to present this entire matter to a court of law under the provisions of Section 503 of the Nationality Act of 1940. In view of all the circumstances, it is believed that this is the only means which is open to you to have your citizenship status determined authoritatively."

3 4. That in view of the Commissioner's ruling, your petitioner seeks a declaratory judgment of this Court, pursuant to Section 274d, Title 28, U. S. C. A., clarifying and determining her citizenship status.

Wherefore, petitioner prays that this Court enter an order declaring that she is an American citizen.

Edgar M. Alstad,
Attorney for Petitioner,
356 Lakewood Blvd.,
Madison 4, Wisconsin.

4 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

ANSWER.

(Filed October 23, 1946. Herbert C. Hale, Clerk.)

Now comes the defendant herein, United States of America, by its attorney of record, Charles H. Cashin, United States Attorney for the Western District of Wisconsin, and for answer to the petition for Declaratory Judgment filed herein says:

1. It possesses no information sufficient to form a belief that petitioner is a resident of the City of La Crosse, County of La Crosse, State and Western District of Wisconsin.

2. It possesses no information sufficient to form a belief that on the 26th day of December, 1940, the petitioner married one Alessandro Savorgnan, an Italian national, or that the petitioner at no time renounced her American citizenship.

3. It possesses no information sufficient to form a belief that on June 28, 1946, the Acting Commissioner of the Immigration and Naturalization Service of the United States advised the petitioner as stated in paragraph 3 of the petition.

And as a further answer to the petition, defendant says, in the alternative:

4. This Court has no jurisdiction of this action, whether it is brought under Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) or under the Federal Declaratory Judgment Act (28 U.S.C. 400), in that the defendant, the United States of America, has not consented to be sued under either of said Acts; or

5 5. The appropriate statute under which this petition should be brought to clarify petitioner's citizenship status is Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) rather than the Federal Declaratory Judgment Act (28 U.S.C. 400).

Wherefore, defendant prays that this Court dismiss this petition for a declaratory judgment.

Charles H. Cashin,
United States Attorney,
Western District of Wisconsin.

6 • • (Caption—1738) • •

November 21, 1946.

Appearances: Mr. Edgar M. Alstad, Attorney for the Plaintiff. Mr. Charles H. Cashin and Robert Bablitch, Attys. for Defendant.

The Plaintiff's motion to amend the petition in the above entitled proceeding, by adding thereto as parties defendant, the Attorney General of the United States and the Commissioner of Immigration and Naturalization, is granted.

It Is Hereby Ordered, that the plaintiff file and serve within five days from this date, an amended petition, and that the defendant may have thirty days within which to file and serve its answer to said amended petition.

7 In the District Court of the United States of America.

• • (Caption—1738) • •

AMENDED PETITION FOR DECLARATORY JUDGMENT.

(Filed Nov. 25, 1946. Herbert C. Hale, Clerk.)

The petitioner herein, by her attorneys, George P. Ruediger and Edgar M. Alstad, respectfully shows to the Court and alleges:

1. That she was born at Reedsburg, Wisconsin, on 2 May, 1915, and that her parents, Albert O. Sorge and Lucinda Wheeler Sorge were native born Americans. That from the time of her birth until July 1941 she resided continuously in the United States and that she was then and is now and was at all times mentioned herein a citizen of the United States.

2. That on the 26th day of December, 1940, the petitioner married one Alessandro Savorgnan, an Italian national, but that at no time did the petitioner renounce her American citizenship.

3. That in July of 1941 she went to Italy and due to subsequent war conditions and reasons beyond her control

she was compelled to reside in Italy until termination of hostilities.

4. That she applied to the American Consulate at Rome, Italy for registration as an American citizen, and on January 24, 1945 was advised by Linton Crook, American Vice Consul that her application had been approved by the Department of State at Washington, D. C.

8 5. That due to the serious illness of her mother, she was unable to await the issuance of an American passport, and entered the United States at Boston, Massachusetts, on an Italian Diplomatic Passport, on November 1, 1945.

6. That she then applied to the Commissioner of the Immigration and Naturalization Service for clarification of her citizenship status, and on the 28th day of June, 1946, the Hon. T. B. Shoemaker, Acting Commissioner of said Service advised the petitioner as follows:

"The matter was considered by the Commissioner, and in part he ruled as follows: 'The question is a perplexing one; the answer is not clear. Administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with sureness until passed upon by the courts. Accordingly, the case should be decided against the claimant in the pending administrative proceedings. She may then seek judicial review if she so chooses.'

"You are at liberty to present this entire matter to a court of law under the provisions of Section 503 of the Nationality Act of 1940. In view of all the circumstances, it is believed that this is the only means which is open to you to have your citizenship status determined authoritatively."

Wherefore, petitioner prays that this Court enter an order declaring that she is an American citizen.

Edgar M. Alstad,
Attorney for Petitioner,
356 Lakewood Blvd.,
Madison 4, Wisconsin.

10 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—1738) * *

ANSWER TO AMENDED PETITION FOR DECLARATORY JUDGMENT.

(Filed Jan. 27, 1947. Herbert C. Hale, Clerk.)

Now comes the defendants herein by their attorney of record, Charles H. Cashin, United States Attorney for the Western District of Wisconsin, and for answer to the amended petition state:

1. Admit that on May 2, 1915 petitioner was born at Reedsburg, Wisconsin, and that her parents, Albert O. Sorge and Lucinda Wheeler Sorge, were native born Americans, and that from the time of her birth until July, 1941 she resided continuously in the United States. Deny that petitioner is a citizen of the United States but in that behalf state that she is a national and citizen of Italy, as hereinafter alleged.

2. Admit that on the 26th day of December, 1940 petitioner married one Alessandro Savorgnan, an Italian citizen and national, but deny that at no time did she renounce her American citizenship. In that behalf defendants allege that in order to marry said Alessandro Savorgnan, who was then serving as Italian Vice Consul at St. Louis, Missouri, it was necessary for petitioner to become an Italian subject. That on March 28, 1940 petitioner, under the name of Rosette Andrus Sorge, her maiden name, applied for Italian citizenship, and by Royal Decree of August 25, 1940 such citizenship was granted to her. Thereafter, on November 23, 1940, she formally renounced her American citizenship and took the oath of allegiance to the King
11 of Italy before an Italian consular officer at Chicago, Illinois.

3. Admit that in July of 1941 petitioner went to Italy but deny that her stay in that country was due to conditions beyond her control. In that behalf defendants allege that she voluntarily stayed in Italy until on or about the 1st day of November, 1945, at which time she was permitted to enter the United States for a temporary stay on a foreign visitor's visa.

4. They possess no information sufficient to form a belief that petitioner applied to the American consulate at Rome, Italy for registration as an American citizen and on January 24, 1945 was advised by the American Vice Consul that her application had been approved by the Department of State at Washington, D. C.

5. Admit that petitioner applied to the Commissioner of the Immigration and Naturalization Service for classification of her citizenship status and on the 28th day of June, 1946 was advised by the Honorable T. B. Shoemaker, Acting Commissioner of said Service, as set forth in paragraph 6 of her petition.

6. Deny all matters not herein specifically denied.

As a further answer to the petition defendant United States of America says:

This Court has no jurisdiction of this action as to the defendant, United States of America, whether it is brought under Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) or under the Federal Declaratory Judgment Act (28 U.S.C. 400), in that such defendant has not consented to be sued under either of said Acts.

Wherefore, defendant prays that this Court dismiss this petition with costs.

Charles H. Cashin,
United States Attorney for the Western District of Wisconsin.

12 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—1738) * *

TRANSCRIPT OF PROCEEDINGS

(Filed Jan. 13, 1947. Herbert C. Hale, Clerk.)

14 had and evidence offered on the hearing of the above-entitled cause, in said Court, sitting in the City of Wausau, in said Western District and State of Wisconsin, the Honorable Patrick T. Stone, Judge, presiding; said cause having come on for partial hearing on Friday, the 3rd day of January, 1947, at the hour of two o'clock in the afternoon.

Appearances:

Mr. Edgar M. Alstad, on behalf of the plaintiff.

Mr. Robert A. Babiitch, Assistant United States Attorney, on behalf of the defendant.

15 Mr. Alstad: May it please the Court:

We have stipulated here that we may take some testimony today, because the witnesses will be unavailable at a later date.

The Court: I suppose it may be stipulated that the testimony on behalf of the plaintiff may be taken now, before issue, and used by the Court with full force and effect, as if taken after issue?

Mr. Bablitch: Yes, your Honor. I think, however, there should be this qualification, in fairness to the Government:

We have agreed to have the testimony of the witnesses taken in this manner, because of the fact that, as I understand it, both the petitioner and her husband, who is also here, are leaving the country very shortly; but I do believe it should be a condition of the stipulation that the testimony can only be used in case petitioner's counsel presents an affidavit at the time of the trial that either or both of the witnesses are still out of the country.

The Court: That is all right.

Mr. Alstad: That is correct.

The Court: That is fair and reasonable. It may be so stipulated.

16 ROSETTE SORGE SAVORGNAN, the plaintiff, called as a witness in her own behalf, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alstad.

Q. Mrs. Savorgnan, what is your full name?
A. Rosette Sorge Savorgnan.
Q. Where were you born?
A. In Reedsburg, Wisconsin; May 2nd. 1915.
Q. Where did you reside after you were born?
A. I resided in Reedsburg until I was nine, and then in La Crosse until I was eighteen, and then in Milwaukee, and St. Louis, Missouri.
Q. And you are the plaintiff in this action?
A. Yes.
Q. And are you married?
A. I am.
Q. When did you become married?
A. I became married on December 26th, 1940.
The Court: Q. 1940?
A. 1940.
Mr. Alstad: Q. And whom did you marry?
A. I married Alessandro Savorgnan.
Q. And was he an American citizen?
17 A. No, he was an Italian citizen.
Q. And he was employed by the Italian Diplomatic Service?
A. That is right.
Q. At the time of your marriage, did you sign any papers?
A. Yes, I signed a document written in Italian.
Q. Where was that paper signed?
A. That was signed before the Italian Consul General in Chicago.
The Court: Q. Where were you married?
A. I was married in Waukon, Iowa, by a Justice of the Peace.
Q. In Iowa?
A. Iowa, yes.
Mr. Alstad: Q. Did you understand Italian at that time?
A. No, I did not. I did not speak or read Italian.

Q. Did your husband explain to you that signing that paper might endanger your American citizenship?

A. No. He merely told me that it was an acquisition of Italian citizenship in order to marry an official of the Italian Foreign Service.

Q. Would you have signed that paper if you thought that you would lose your American citizen-
18 ship?

A. No.

Q. Did your husband at any time advise you that you were not endangering your American citizenship?

A. My husband had been informed previously that I would not in any way endanger my American citizenship by signing such a document.

Q. Did you appear before any American officials and sign any documents or make any statements?

A. Never.

Q. Did you ever leave the United States?

A. Previously?

Q. After your marriage?

A. Yes, after my marriage. Six months after my marriage I followed my husband on his mission.

Q. What were the facts surrounding your husband's departure from America?

A. In 1941, when they closed the Italian consulates in this country, my husband was sent back to Italy.

Q. And you accompanied him to Italy?

A. I accompanied him to Italy.

Q. Was it your intention to establish a permanent residence abroad?

A. No, never.

19 Q. How long did you stay in Italy?

A. I stayed in Italy during the duration of the war.

Q. Were you able to leave Italy prior to the time that you actually did?

A. Never. I tried—I tried with the Swiss authorities to find some way—it was the only agency to whom I could go—and I could not get through, because they had all—they could not help anybody over there at that time.

Q. As soon as the war was over, did you make application for an American passport?

A. Immediately. I tried first with the Swiss authorities, who were the only persons to whom we could go; I made application for my American passport, but it was

very difficult, transportation and all was difficult, they didn't communicate very well with the United States, so, when—as soon as the American consulate was established in Rome, I went there, the very first days, and went to the consulate and made application for my American passport.

Q. What did the State Department advise you as to your application?

A. Several weeks, or, months later, I think it was a question of a couple of months, the consulate in Rome, the American consulate at Rome informed me that the
20 State Department had said that my application for my American passport had been approved.

Q. Did you receive a message at that time that your mother was ill?

A. No, not at that time. They told me at that time that my passport could not be given until I had evidence of transportation to come back to this country; and shortly after this I had word that my mother was very ill, and I went to them for my passport, but in the meantime they said that they had had a change of opinion, a change of something which I never understood, and they said that they could not issue the passport.

Q. You then obtained—

A. When my mother was dying, they suggested that the fastest thing for me to do, because they must communicate again with the United States, which took maybe days, my mother was dying, they suggested that I use my Italian diplomatic passport to come across, which would facilitate the thing greatly. And that is what I did. My mother died before I arrived in the United States.

Q. You then obtained that Italian diplomatic passport in order to return to the United States to see your mother before her death?

A. That is right.

21 Q. Were you at any time employed by a foreign government?

A. No foreign government. By the United States government.

The Court: Q. What is tha ?

A. I was employed—when the American troops came into Rome, I worked for the Americans, for the Allied Commission in Italy.

Q. Were you employed at the time of your marriage?

A. I beg your pardon?

Q. Were you employed at the time of your marriage?

A. No, no. That was in Rome.

Q. No, but I am asking that also: Were you employed here in this country at the time of your marriage?

A. Oh, no, no.

Mr. Alstad: Q. On your return to America, you then applied to the Immigration Officer for a clarification of your status?

A. That is right.

Q. And he advised you that the thing was in such condition that it should be decided upon by a Court?

A. Yes, the definite decision should come from the Court, because it was on a level, they explained, that the State Department could not make the decision that
22 would be a final decision; the decision should come from the Court.

Q. When you signed that paper before the Italian consulate, you merely thought that was a formality required for your marriage?

A. Absolutely.

Mr. Alstad: That's all.

Cross-Examination by Mr. Bablitch.

Q. What was your mother's maiden name?

A. Lucinda Wheeler.

Q. And your father's full name?

A. Albert Owen Sorge.

Q. And what was their ancestry?

A. They were both American.

Q. And were they born in this country?

A. Yes, both, near Reedsburg.

Q. Where did their forefathers come from?

A. My mother's came from some place in the British Isles—her mother was also born in this country, however, my grandmother was born in this country. And my grandfather on my father's side came from Germany.

Q. And what does your education consist of?

23 A. I have a Bachelor of Science degree, and I took all my education in this country. I went to school in Wisconsin, and was graduated from Milwaukee Downer College.

Q. Did you take any foreign languages at school?

A. No—I took Latin in high school.

Q. You took Latin in high school?

A. In high school—which was required.

Q. When did you become acquainted with your present husband?

A. When I was in St. Louis in 1939.

Q. And how did that acquaintanceship arise?

A. My husband was living in the same—well, we met through friends from Reedsburg, and we had common friends, and he knew them, and we ran on to them on the street, and they introduced us.

Q. Was he in the Italian consular service at that time?

A. Yes, he was.

Q. And did he speak English at that time?

A. Yes.

Q. Fluently?

A. Yes.

Q. Did anyone tell you that it was necessary for you to sign this paper that we have been talking about at Chi-
24 cago, in order to marry your husband?

A. No. At the time I signed it, I was told that it was just a formality in order to acquire this citizenship in order to marry my husband; but I had been told that it would in no way endanger my American citizenship.

Q. Who told you that?

A. My husband.

Q. Was that the first paper that you signed with reference to the question as to your citizenship involved in your marriage, the one at Chicago?

A. Yes—no, let me think. The one I signed in Chicago? I think there was an application signed previous to that. I don't remember.

Q. And do you know when that application was signed?

A. Well, some months before.

The Court: Q. Application for what?

A. For Italian citizenship.

Q. You did sign an application?

A. Well, I think that is what it is. It was in Italian, and I did not understand it at the time.

Q. You are speaking now about the document you signed at the time of your marriage?

Mr. Bablitch: No. She is speaking of a different document, your Honor.

25 The Court: No.

Mr. Bablitch: Q. And you say that document was in Italian?

A. In Italian.

Q. Do you understand Italian now?
A. Now, I do.
Q. Do you read Italian?
A. Yes.
Q. And do you know how it happened that you signed that application that you speak of, for Italian citizenship?
A. Only the circumstances that I say. I signed it in order to be able to marry my husband.
Q. You were married in December, 1940?
A. In December of 1940.
Q. Did you become engaged before your marriage?
A. No.
Q. When did you contemplate marriage for the first time?
A. Oh, about—almost a year previous.
Q. You never became formally engaged, however?
A. No, never.
Mr. Bablitch: I ask that this be marked for identification as Government Exhibit No. 1.
26 (Document produced by counsel is marked exhibit 1 for identification, as requested.)
Mr. Bablitch: Q. I show you what has been marked for identification as Government's exhibit No. 1, which purports to be an application by you, in the Italian language, for Italian citizenship.
Will you read that, please—to yourself, first.
(Witness examines exhibit.)
A. Yes, I have read it.
Q. Can you state whether or not that exhibit that you have in your hand is an identical copy of an application which you signed for Italian citizenship?
A. No.
Q. It is not?
A. I don't remember.
Q. You don't remember?
A. No.
Q. Can you read that application for the benefit of the Court and us?
A. Do you mean in Italian?
Q. In English.
A. Well, it is rather technical, as I find it, even
27 with my knowledge of Italian now, I don't know if I can translate it too well—I will try.
Q. If you will, do the best you can, please?

A. Yes.

"The undersigned Miss Rosette Andrus Sorge, of Albert O., born at Reedsburg, in the State of Wisconsin, United States, the 2nd of May, 1915, resident in St. Louis, State of Missouri, citizen of United States of America, with the present"—

I don't know how to translate one part here, "fa istanza"—I think it means—

"asks that Italian citizenship be given under the sense of Article 4 of the Law No. 13 of June, 1912, No. 535, as modified under Article 1 of Royal"—

I guess it must mean—

"law of the 1st of December, 1934, No. 1997, and that it becomes"—

There is something here I don't understand. It is too technical for me—"it becomes"—I can't really read it—something under the last article.

Q. It refers to an Italian law, does it not?

A. Yes, to an Italian law, that's right.

Q. Yes.

28 A. And it is signed "Rosette Andrus Sorge, St. Louis, Missouri, 28 March, 1940."

Q. Now, a paper of that same tenor, or general tenor was signed by you on March 23rd, 1940, is that correct?

A. March 28th, it says here.

Q. March 28th; and that was signed at St. Louis?

A. Apparently, yes, because my address is here. This part I do not remember (indicating).

Q. You recall signing a paper of similar nature, do you not?

A. I remember signing something—

The Court: Q. Whom was it signed before?

A. Nobody.

Mr. Alstad: It was signed before the Italian consulate.

The Witness: No.

Mr. Bablitch: Q. Is there anything on that exhibit to indicate before whom it was signed?

A. No, there is nothing; just my address here, in the Coronado Hotel, where I lived.

Q. Yes, and whom is it addressed to, please?

A. It is addressed to nobody. It says:

"The Royal Ministry of Foreign Affairs in Rome."

I mean it is not addressed to anybody. It is for

29 their file, apparently.

Q. Now, how did it happen that you signed a paper of that general nature on March 28th, 1940?

A. In order—I was told that my husband, being an official of the foreign service, could not marry a person who did not have an Italian citizenship; and so this, apparently, from the reading of it, is an application to acquire that Italian citizenship. But I never, never in any way thought it would ever endanger my American citizenship.

Q. Who presented that paper to you?

A. It must be my husband.

Q. Do you know who composed it?

A. No.

Q. Do you recall who incorporated that information in there, relative to the maiden name of your father, or your birth date, I believe that is given in there?

A. No, I don't know.

Q. You don't recall giving that information to anyone?

A. Apparently it must have been to my husband, because I would have recalled giving it to someone else. He knows my mother's name.

Q. How many years of Latin did you have?

A. I had two years, I believe.

30 The Court: Q. When did you finish high school?

A. In 1933.

Q. And you were married in 1940?

A. I was married in 1940.

Q. So the little Latin you learned in high school wasn't of any value to you?

A. I remember nothing of my Latin today. I can't even understand Latin.

Mr. Bablitch: Q. Did you read that application at the time you signed it?

A. No. It was in Italian. I couldn't have understood it.

Q. Did anybody explain the nature of what you were signing?

A. Only what I have told you now: That it was a formality in order to be able to marry my husband.

Q. Did anyone ever tell you that it was necessary for Italian consular officers—strike that.

Did anyone ever tell you that in order to marry an Italian consular officer, it was necessary for you to renounce your American citizenship?

A. No, no.

Mr. Alstad: There is nothing there about renouncing American citizenship. I object to that, your Honor.

31 This was an acquisition of Italian citizenship.

The Court: Q. Was that application that you have identified as an exhibit, and the other, both signed before you were married?

A. Yes.

Q. Did you take any steps after the signing of that application, to become an Italian citizen?

A. No, none whatsoever.

Q. You didn't appear before any Court officer?

A. No, never.

Mr. Bablitch: Q. Now, after that application was signed, do you know to whom it was submitted?

A. No.

Q. Do you know whether or not you were granted Italian citizenship in the summer of 1940, by royal decree?

A. I don't believe—no. It could not be.

Q. If we were to tell you that on August 25th, 1940, by royal decree you were granted Italian citizenship, would this be the first time you heard that?

A. That in August of—

Q. On August 25th, 1940, you were granted Italian citizenship by royal decree?

A. Well, I don't remember.

Q. Well, did anyone ever advise you that you had

32 been granted Italian citizenship by royal decree?

A. Shortly before I was married, a few days before I was married, we were—I was notified by phone that the consent to marry my husband had been given. That's all I know, that's all I ever heard. Now, the steps that have preceded that, I do not know what they were.

Q. And who telephoned you?

A. The telephone call came from the Italian Consulate in Chicago, where this had taken place.

Q. Where were you at that time?

A. I was in La Crosse.

Q. And where was your husband stationed?

A. In St. Louis.

Q. And what was the nature of the telephone call?

A. Merely a communication—it was even in Italian—I understood very little of it.

Q. And what was the nature of it?

A. Well, the nature was a telephone call, saying that this permission that had been—which for one year my husband had been trying to procure, had finally come through.

Q. Were you ever—were you advised to follow that up with anything?

A. Never.

33 Q. How did it happen that you signed this paper in Chicago shortly before your marriage, that you have spoken about, that has not yet been identified?

A. Well, that was part of this procedure.

Q. Well, who advised you to sign a paper in Chicago shortly before your marriage?

A. My husband.

Q. And where were you then?

A. I was—where was I residing?

Q. Yes.

A. At that time I was residing, I think, in La Crosse.

Q. And where was your husband stationed?

A. St. Louis, Missouri.

Q. And who made arrangements for you to go to Chicago?

A. My husband.

Q. And you met him there?

A. Yes.

Q. Did he tell you why he wanted you to go to Chicago?

A. Well, I don't remember.

Q. Well, what did you do when you got to Chicago?

A. I was taken to the Italian Consulate, where he also had work and friends; and I was taken into a room and given this paper, a piece of paper to sign, which was written in Italian, and which I did not understand.

34 Q. Did you look the paper over?

A. I looked at it, but I didn't understand it.

Q. Did your husband, or anyone, explain to you the content of that paper?

A. No.

Q. Do you now know what the content of that paper was?

A. Now that I read Italian, I understand it.

Q. Have you seen the paper since you have acquired a reading knowledge of Italian?

A. No—I think a copy, a translation, if I am not mistaken, which was in a file some place.

Q. You have seen a translation of it, however?

A. I believe I have seen the translation.

Q. How long were you at the Italian Consulate in Chicago on the day that we are speaking about, when you signed this paper? Were you there very long?

A. No.

Q. Were you asked to raise your hand, or anything, in connection with a ceremony there?

A. No.

Q. All you did was signed a paper?

A. I signed a paper.

Q. Were there any witnesses to it?

A. I believe there were people I knew in the consulate, I knew many of them.

Q. And nobody explained to you at that time what the nature of the paper was?

A. No.

Mr. Bublitch: Mark this, please.

(Document produced by counsel is marked exhibit 2 for identification, as requested.)

Mr. Bublitch: Q. I show you what has been marked for identification as Government's exhibit No. 2, and ask you to read that document, if you will, please?

A. It is a translation:

"Royal Consulate General of Italy
"Victor Emannuel III
"By the Grace of God and the will of the Nation
"King of Italy and Albania
"Emperor of Ethiopia

"On this day November 23rd 1940, 19th of the Fascist Era, in the Chancery of this Royal Consulate General in this post, Miss Rosetta Andrus Sorge, daughter of Lucinda E. Wheeler and Alberto O. Sorge, born in Reedsburg, Wisconsin, the second of May, 1915, to whom in virtue of Article 4 of the law of June 13, 1912 #555 modified by article 1 of the Royal Decree Law of the first of December 1934 #1997, is conceded the Italian citizenship with the Royal Decree law of August 23 1940 XVIII, registered in the Corte dei Conti on September 26 the u.s., came before us, Commissioner Riccardo Moscati, Royal Consul General in this post, invested with the functions of Civil status official

"The person in question, having been requested to take an oath as prescribed by article 5 of the aforementioned

law, as prescribed in article 5 of the Royal Decree 2d of August 1912, #949 pronounced the following words:

"'I, Rosetta Andrus Sorge, born an American citizen, declare I renounce and in truth do renounce my American citizenship, and swear to be faithful to His Majesty the King of Italy and Albania, Emperor of Ethiopia, to his royal successors, and to loyally observe the statutes and other laws of the Kingdom of Italy.'

"Present were as witnesses Mr. Giuseppe Dall'Agnel fu Antonio age 58, native of Molvena Province of Vicenza, Royal Chancelor attached to this Royal Consulate General, and the Lawyer Edoardo a Fiori di Giovanni, age 41, native of San Vito, Cadore, Province di Belluno, Legal at-
37 tache of this Royal Consulate General.

"And we, Royal Consulate General, have written in 5 copies, the present document that comes from us, Miss Rosetta Andrus Sorge and the undersigned witnesses.

"(Signed) Rosetta Andrus Sorge
G. Dall'Agnol
Eduardo A. Fiori

"R. Moscato
"(Seal of the Royal
Italian Consulate
Chicago)"

Q. You now know that that is a translation of the document that you signed in Chicago in November, 1940?

A. Yes.

Q. Do you not?

The Court: That isn't a translation of the document that she signed, is it?

Mr. Babiitch: Yes.

The Court: No. This is the granting of citizenship, isn't it?

The Witness: That is the granting of citizenship. That (indicating) is the document.

Q. Here (indicating) is the application that you said you signed in Chicago?

A. Yes, that's right.

38 Q. Do you ever remember of signing the document that was just read?

A. No, I didn't recite that. The first time I have recited it is right now.

Q. What is that?

A. I have never recited that before.

Q. Did you ever see that before, anything like that?

A. No; it is a translation, and anything I saw previous was in Italian, and I couldn't speak Italian, so I couldn't have recited it.

Q. How old are you?

A. I am 31.

Q. How old were you when you were married?

A. 26.

Q. How old was your husband at that time?

A. I believe—33, I believe.

Q. Could he talk English fluently?

A. Quite fluently.

Mr. Bablitch: Q. Well, now, isn't it true that, on the day that this document is dated, you did take an oath of Italian allegiance?

A. Well, do you mean this I just read (indicating)?

Q. Yes.

A. Well, I didn't say anything—I mean, this is a
39 translation. I couldn't have said that.

Q. Didn't you sign some document?

A. I signed something, it must have been this thing that I signed, but I don't know what it was. It was in Italian.

Q. Yes.

Mr. Bablitch: Her name doesn't appear here, your Honor, but our information is she did so sign. We have not been able to get the original, as yet.

Q. So, even after this transaction in Chicago that we have been speaking about, and after the marriage to your husband, which occurred shortly after, in Iowa, it is your position that you did not know that you might have lost your American citizenship?

A. Absolutely.

Q. It was your position that you still were an American citizen?

A. Absolutely.

Q. And had in no way acquired Italian citizenship?

A. No. I thought I realized that I acquired Italian citizenship, or my husband could not have married me, had I not had an Italian citizenship.

Q. Who told you your husband could not have married you unless you acquired Italian citizenship?

40 A. He did.

Q. Did he explain that further, that it might have

been difficult for him to secure permission to marry you without your acquiring Italian citizenship, but such permission could have been obtained in some cases?

A. Well, that was the general explanation. There were no details given.

Q. Yes, but isn't it a fact that he did explain to you that it wasn't absolutely necessary for you to secure Italian citizenship in order to marry him, but it would expedite matters? Didn't he explain that?

A. No.

Q. Well, did he say that the only way you could possibly marry him was to secure Italian citizenship?

A. That's right.

Q. And you remained in this country until July of 1941, after your marriage to your husband?

A. That's right.

Q. And after his and your marriage, where were you stationed?

A. In St. Louis.

Q. All the time?

A. In St. Louis.

Q. Now, did anyone advise you to write the State
41 Department in Washington, or any other agency of the United States Government, relative to possible Italian citizenship?

A. No.

Q. Did you ever so write any agency of the government?

A. No.

Q. While you were in this country after your marriage?

A. Absolutely never.

Q. You had no communication of any kind with the State Department—

A. None.

Q. (Continuing) —or any other department of the government?

Mark this, please.

(Document produced by counsel is marked exhibit 3 for identification, as requested.)

The Court: Q. Did you ever vote in this country?

A. Pardon?

Q. Did you ever vote in this country, at any election?

A. Yes.

Q. Did you ever vote in Italy at any election?

A. Never.

Q. Did you ever take part in any election over there?

42 A. Never, nothing.

Mr. Bablitch: Q. I show you what has been marked as Government's Exhibit No. 3, which purports to be a—

The Court: Let me ask one more question.

Mr. Bablitch: Yes?

The Court: Q. After your marriage, did you vote in this country?

A. There was no—after I was married, there was no chance to vote. I was married in December, and I left in July.

Mr. Alstad: Q. But you are a registered voter in Wisconsin?

A. I am a registered voter in Wisconsin.

The Court: Q. Where?

A. In La Crosse.

The Court: All right. Go ahead.

Mr. Bablitch: Q. I show you what has been marked as Government's Exhibit No. 3, which purports to be a notification on government form to the Secretary of State's office, notifying that branch of the government of a change in official status; and ask whether or not your name appears on the inside page of that exhibit?

(Witness examines document.)

Q. Well, is that your signature, on the inner page

43 (indicating)?

A. That's my signature.

Q. You signed that document?

A. I signed this document. I don't remember signing it.

Q. That document is in English?

A. This document is in English.

Q. And on that document, in answer to a question: "Present nationality," your nationality is stated as: "Italian." Is that correct?

A. That's right. It is written here.

Q. And that document purports to have been dated on February 5th, 1941, shortly after your marriage, is that right?

A. I had acquired Italian citizenship.

Q. Who asked you to sign this document?

A. I remember nothing about this document.

The Court: Q. What is that?

A. I do not remember when or under what circum-

stances I signed this document. It is not at all familiar to me.

Mr. Bablitch: Q. Do you know where the photograph attached to that document, of yourself, was secured?

44 A. That's a photograph that was taken—it is a family photograph, it is taken by a photographer—it is apparently a thing that has been reduced.

Q. Do you have any independent recollection whatsoever of the circumstances surrounding your signing of this document?

A. No.

Q. I assume that you are in the habit of reading any documents written in the English language that are presented to you for signature, are you not?

A. I am, now.

Q. Well, you were then, at the time that document was signed?

A. I hadn't signed very many documents. I don't remember.

Q. Isn't it a fact that the reason you signed that document and submitted it to the State Department is because your husband advised you that you had obtained Italian citizenship, and it was necessary, and required by the United States Government, to file such a form with Washington?

A. Apparently so. My husband apparently filed this very document, because I didn't.

Q. Yes, but when you signed that document, isn't it

45 true that you were advised by him that the United States Government required that, where a person changed his citizenship, it was necessary that the government, the Secretary of State's Office, be so notified?

A. Absolutely not.

Q. It is not your position here, is it, that that document, when you signed it, was in blank?

A. Why, I wouldn't make such a statement, because I don't remember this. Truthfully, I do not remember this. The signature looks like my signature, that I can say; and the photograph is mine. But I did not file it; I do not remember the circumstances under which it was filed.

Q. And you don't even remember who presented it to you?

A. No.

Q. When did you leave this country?

A. In July of 1941.

Q. Do you recall the date?

A. Not exactly. It was around the middle of July, I do believe.

Q. And were you working after your marriage, until your departure from this country?

A. Working? No.

Q. Do you recall when your husband received orders that it would be necessary, because of impending war
46 that he leave the country?

A. No. My husband was notified that he was going to be sent to Manchukuo, and we were given about a month's leave, to go and stay with my parents before the sailing of our ship, which was leaving from San Francisco. The other Italian consuls in the country were leaving from New York, and had made all arrangements to go.

And, enroute to my parents' home, we were in Chicago overnight, and we got a telegram from Washington, saying that orders had been changed, and we must reach that boat—

Q. What boat?

A. The boat from New York, which was leaving in the morning, and they would hold the boat; and I had to leave, I left following my husband, and that is why there was a rush.

Q. When had he received his original orders that were later countermanded, that required him to sail from San Francisco to this foreign port that you are talking about? When had he received those orders?

A. About going from San Francisco?

Q. To Manchukuo, was it?

A. To Manchukuo—oh, about, I think a month or so. I don't remember.

47 Q. A month before your departure for Europe, is that right?

A. No, no, no, he had known about it—wait, now. I mean, at that time there was such a confusion, I don't remember.

Q. Well, was there a considerable lapse of time before he received this final notice?

A. No, no. He just found out. We left immediately after we had learned it. You see, we were going to stay with my family.

Q. Yes.

A. We left immediately, after we had learned that we were going to take the boat from New York. Instead of

being ordered to take boat from New York, we were told we were going to take boat from San Francisco, and there was no time to see.

Q. Did you apply for a passport for that journey that was going to take you to Manchukuo?

A. I didn't have them—do you mean for my American passport?

Q. For any passport?

A. No, I had just learned about it. We were going to be in the country one month, we were told we would be here a month before sailing, and in that time we were
48 going to make all arrangements for passports and all other necessary arrangements.

Q. Do you have any independent knowledge when Italian consuls were advised it would be necessary for them to leave the country, or members of that service?

A. No, I don't remember. It was just at that time, in July, I think.

Q. On what boat did you sail for Italy?

A. We sailed on the West Point.

Q. On or about July 15th, 1941?

A. Yes.

Q. And on what sort of passport did you sail?

A. I think a diplomatic passport.

Q. That was an Italian passport, was it not?

A. Italian diplomatic passport.

Q. Did you make any effort to secure an American passport at that time?

A. I had no time. We were notified at eleven at night, and we had to be in New York, on the boat, the next morning early.

Q. Did you have to make an application for an Italian passport?

A. No.

Q. And when did you arrive in Italy?

49 A. I should say eight days later.

Q. And where did you take up quarters?

A. I didn't hear you.

Q. Where did you take up quarters, in what city in Italy?

A. Oh, in Rome.

Q. And did you remain in Rome until you left for the United States again?

A. Yes—no. I was in Salzburg for six months, and there—

Q. Yes.

A. And there we were interned by the German Gestapo.

Q. What position did your husband hold with the Italian government, if any, during the time after you arrived in Rome, until the time of your departure for the United States?

A. He served in his foreign ministry. I don't know what he did.

Q. Do you recall when the war broke out between the United States and Italy? Do you recall when that was?

A. Yes, it was in December. In December.

Q. Of 1941?

A. Yes.

Q. Now, before war broke out in December, 1941,
50 and after your arrival on or about July 23rd, 1941, had you made any efforts whatever to get in touch with the American consulate at Rome with reference to a clarification of your citizenship status?

A. There was no American consulate at Rome. They had been withdrawn. At the time the Italian consulates were closed here, the American consulates were closed there.

Q. Did you address a letter to the State Department in this country?

A. I went to the Swiss Legation, which was the only office which could serve Americans at that time.

Q. And when did you go there?

A. Well, before war broke out.

Q. You never directed a letter to the State Department in Washington, however, nor did you contact any American consular officer with reference to your citizenship status until 1944, is that correct?

A. There was nobody there I could contact. I did contact the Swiss.

Q. But you didn't contact them?

A. Yes, through the Swiss, yes, I tried to contact them.

Q. And what were you told at that time?

A. Well, they put this application in—they took my application for a passport, in case eventually I could
51 get out through some other channel, if some way would open up that I could go home.

Q. But you did not write to the authorities in America, did you?

A. I couldn't, there was no possible way. There was no communication between the countries.

Q. There was no way to write to the American authorities from July, 1941, until war broke out in December, 1941?

A. Well, I presume there were.

Q. Yes.

A. I went to my Swiss—I was told that the Swiss Legation handled the work of the American, that the American consulates were doing. So I went to them, through official channels, not directly.

Q. Do you know when the American army broke into Rome?

A. I do.

Q. Was that in June of 1944?

A. That's right.

Q. What, if anything, did you do with reference to your status at that time?

A. I immediately—I went—I started working for them the day after its arrival, and I worked for the Allied Commission until the day I left Italy.

And as soon as—of course, the American consulate
52 wasn't opened until many months later, and I went there the very first, I believe it was the day the consulate was opened.

Q. When was that?

A. I think it was in October.

Q. Of 1944?

A. That's right.

Q. And did you discuss your problem with anyone at that time?

A. Oh, yes, and they had had the application the Swiss had—they had found that; it had gotten back into their hands eventually.

Q. Did you sign a new application in October, 1944?

A. Yes, because at first they didn't know whether the other one that I made through the Swiss had been lost, because during the war so many letters and things had gone astray; so they suggested, to make sure, that I make a new application.

Q. That application that you made in October of 1944 was in the English language?

A. For my American passport?

Q. Yes.

A. Yes.

Q. And do you recall that certain information was
53 asked of you on that application?

A. Yes, I had to state all the facts.

Q. Do you recall, in answer to a question on that application, that you stated that you had not taken an oath of allegiance or been naturalized to a foreign nation? Do you recall that?

A. Do I recall—

Q. Do you recall that on that application, in answer to a question, you stated that you had never taken an oath of allegiance to a foreign nation?

A. No.

Q. Could you have signed such an application?

A. For this American—

Q. Yes.

A. Yes.

Q. Yes, and you do not recall at this time as to whether or not, in answer to a question on that application, you stated that you had never taken an oath to a foreign nation. You do not recall that?

A. I do not recall that. But I remember the circumstance under which it was done. It was done in quite a haste, quite a hurry. It was done in front of the official of the Swiss, or an officer of the Swiss Legation, I
54 believe, and he filled it out, and he just told me to fill out my name and address, or my name, and he would fill in the rest.

You see, there was some sort of a form; it was not as detailed as the—

Q. Well, assuming that such a question was on that blank:

"Have you ever taken an oath of allegiance to a foreign nation?"

What would your answer have been?

A. My answer would have been "no", because I didn't know at that time.

Q. Do you mean to say that—strike that.

That was in 1944, in October?

A. No, that was before. I made the application with the American—I made one to the Swiss, and one through the American.

Q. The application—maybe we don't understand each other, but the application I have been speaking about is the one made before the American consulate in October of 1944.

A. Yes.

Q. And what would your answer to such a question have been, if you understood the question?

55 A. About the oath of allegiance?

Q. Yes.

The Court: Well, what was the answer? Is there any document?

Mr. Bablitch: It so happens, your Honor, that I do not have the document; but I do have information of what it contains. The matter came on in such a hurry I couldn't secure it from the State Department.

The Court: I see.

Well, do you want to know now, if she were asked at that time if she ever took an oath of allegiance to any other country, what her answer would have been?

Mr. Bablitch: What her answer would have been, that's right.

The Court: Q. Do you recall signing any document on which that question was asked of you?

A. No, I really do not.

Q. If that question was asked of you, what would have been your answer?

A. No.

Mr. Bablitch: Now, you say your answer would have been no?

A. My answer would have been no.

Q. In October of 1944, you had been in Italy three

56 years and over?

A. Yes.

Q. And you had learned to speak the Italian language, had you?

A. Quite well, yes.

Q. Yes, and you had learned to read the Italian language?

A. Yes.

Q. And you had been living with your husband throughout that time?

A. Yes.

Q. And why would your answer have been no?

A. Well—

Mr. Alstad: Your Honor, none of these documents were available to her over in Italy, so she had no conception of what her status was. She considered herself an American all the time; and when she came back here to the United States and made application to this Immigration Officer, then she found out about all these other papers.

She had no knowledge while in Italy as to what her status was, except that she considered herself an American.

Mr. Bablitch: It is for the purpose of checking on her story, is the only reason I am asking this question, your Honor. Our file indicates that she did sign such a
57 document, and that her answer was "no", and she has so testified, that undoubtedly if the document had been presented to her, that she would have answered "no".

I am just trying to find out why she would have answered "no", at that late date, after having been subject to the Italian atmosphere for three years.

The Witness: Well, I probably—I don't know. I am a bit confused on the whole thing.

Mr. Alstad: Q. Well, you considered yourself an American at that time?

A. I considered myself an American citizen, and anything that I had signed before, I felt that it had in no way endangered my American citizenship, so if I put "no" or "yes"—

Mr. Bablitch: Q. The point of the matter is, in October of 1944 you well knew that you had signed an oath of allegiance to the Italian nation, did you not, in October of '44?

A. No.

Mr. Alstad: I object to that.

A. No, I do not know what I signed.

Mr. Alstad: She has testified she does not know what she signed.

Mr. Bablitch: Q. Do you mean to say in three years—

58 The Witness: No, we never discussed it further. I mean that was an end, that was an episode; that was past. I was living in Italy. Nobody had ever questioned me; I didn't know—it had never been brought up again. That was the end of it.

Q. During the time this country was at war with Italy, which began in December, 1941, until the time that you contacted the diplomatic services relative to your status, do you mean to say that you never considered the subject of what your status was, either in conversation with your husband or anyone else?

A. I have always considered that I was an American citizen. There was no doubt in my mind but what I had my American citizenship, none whatever.

Q. Did you ever make any attempt to get in touch with the American officials, relative to your citizenship status, after the outbreak of war with Italy, until you contacted the consular service in October of 1944?

Mr. Alstad: Your Honor, that question is unfair too, because there were no American officials there.

The Court: She has answered repeatedly that she tried to contact those that represented the American government, through the Swiss Legation.

Mr. Alstad: Yes.

59 The Court: Let me ask you this question:

Q. Where were you in Italy during the war?

A. In Rome.

Q. What was your husband doing?

A. He was working in the foreign ministry in Rome.

Q. For the Italian government?

A. Yes.

Q. What were you doing?

A. Staying home, that is, with his family.

Q. Were you working for the government?

A. No.

Q. For that government?

A. No.

Mr. Bablitch: Q. Did you communicate with your parents during this period from 1941, when you were in Italy, until your return?

A. There was no communication.

Q. You did not. Now, you state that you did make this application for an American passport in October of 1944?

A. In October, 1944.

Q. And I believe your testimony on direct examination also was to the effect that that application had been approved?

A. Yes, the State Department replied that my

60 application as an American citizen had been approved.

Q. Who advised you of that?

A. The American consulate in Rome.

Q. Do you have any record of it?

Mr. Alstad: Yes, I will introduce that in just a minute.

The Witness: Yes.

Mr. Alstad: Do you want me to introduce it now?

Mr. Bablitch: Yes, you can. I don't care.

Mr. Alstad: Will you mark this?

(Document produced by counsel is marked exhibit 4 for

identification, and is presented to the witness by Mr. Alstad.)

The Witness: (Reading.)

"American Consular Service
"American Consulate

"Rome, Italy, January 24, 1945.

"Mrs. Rosette Andrus Savorgnan,
91 Via Barnaba Oriani,
Rome.

"Madam:

"The Consulate refers to the application for registration as an American citizen which you executed on October 23, 1944, and is pleased to inform you that it has been
61 approved by the Department of State at Washington.

"Very truly yours,
"For the Consul,
"Linton Crook,
American Vice Consul."

(Document is submitted to Mr. Bablitch for examination.)

Mr. Bablitch: You wanted this as an exhibit?

Mr. Alstad: Yes, that will be our exhibit.

Mr. Bablitch: Q. Counsel has shown you what is marked as exhibit 4 for identification, which is the petitioner's exhibit number 1, which purports to be a letter from the American Consulate at Rome, dated January 24, 1945, approving your application for registration as an American citizen, the application being signed on October 23, 1944.

Was such a letter of approval received by you?

A. This was received by me, yes.

Q. Yes. Was that ever countermanded in any way?

A. No.

Q. And your explanation—strike that. At least, you don't know that it was countermanded?

A. I do not know. I have this, I mean. I know nothing more.

Q. But on your application you gave no informa-
62 tion, did you, relative to your application for Italian citizenship on March 27th, 1940, the fact that such

citizenship was granted by royal decree August, 1940, and the fact that you further renounced your American citizenship at Chicago in November of 1940, did you?

A. I don't remember the questions on the questionnaire.

Q. Would you have given such information if such questions were required by the questionnaire?

A. Yes.

Q. When did you apply for a passport to come back to the United States?

A. Following this (indicating document).

Q. And when?

A. Well, immediately. I don't know when it was—well, shortly after, and that is when I was told that the passport couldn't be issued until I had evidence of transportation.

Q. And again you came back to America on an Italian passport, you say, because of the time element?

A. The time element. My mother was dying, and I couldn't wait for the communication, to straighten it out with Washington.

Q. Do you know whether or not you were required to sign an application to secure permission to travel to
63 America on an Italian passport at that time? Were you required to sign an application?

A. I don't believe so. There was a great deal of confusion, I don't even know what I was doing.

Q. Well, wasn't it necessary for you to sign an application to get an Italian passport?

A. No. I had a diplomatic passport, it was given to me—I didn't have to go even for it. It came from my husband's ministry. It is not an ordinary Italian passport.

Q. Why did you accompany your husband to Italy in July of 1940?

A. Well, to follow my husband. He was going on a mission.

Q. You didn't know how long that stay would be, did you?

A. No.

Q. So far as you were concerned, it was indefinite?

A. No. One can't tell. I was hoping I would be back very shortly.

Q. Yes, but it was for an indefinite period?

A. Why, yes. Nothing is definite in those things.

Q. You were not asked by the American government to accompany him?

A. No.

64 Q. No one asked you to; so it was purely voluntary on your part that you went back, or went over to Italy in July of 1941, isn't that right?

A. Yes.

Q. You wanted to be with your husband and reside with him?

A. I wanted to be with my husband.

Q. And as far as you were concerned, it was for an indefinite period of time?

A. Well, no, you never know.

Q. Yes. As I understand it, you plan on leaving the country shortly, now?

A. For a temporary period.

Q. And where are you going?

A. To Caracas, Venezuela.

Q. Is your husband going with you?

A. My husband is going on a mission, and I am accompanying my husband.

Q. Is your husband now employed by the Italian government?

A. He is.

Q. In what capacity?

A. In what capacity? He is going to serve as the First Secretary of the Italian Legation in Caracas, Ven-
65 ezuela.

Mr. Bablitch: I believe that's all.

Redirect Examination by Mr. Alstad.

Q. What have you regarded as your permanent residence?

A. My permanent residence has always been La Crosse. I have left my belongings there when I went away, and I have always—I have never severed any of these things. It has always been La Crosse.

Q. Your father resides in La Crosse?

A. My father resides in La Crosse.

Q. And you are a registered voter in La Crosse?

A. I am a registered voter in La Crosse.

Mr. Alstad: That's all.

The Court: Q. Have you ever made a formal renunciation of your nationality as a United States citizen before a diplomatic or consular officer of the United States in a foreign state?

A. Never.

Q. Have you ever renounced your citizenship that the government contends that you acquired from the Italian government?

A. No.

66 Q. Have you ever taken any formal action of any kind to renounce your alleged citizenship of the Italian government?

A. No.

The Court: That is all.

Recross Examination by Mr. Bablitch.

Q. You never voted in Italy, of course, did you?

A. Never.

Q. But nobody else voted in Italy during this period, did they?

A. I believe there were elections. I don't know.

Q. You don't know whether there were or not?

A. I think there were. I didn't vote.

Q. And have you voted in the United States since your return?

Possibly I shouldn't ask you that question.

Because of the question at issue, I think possibly I should withdraw that question.

The Court: I didn't hear the question.

Mr. Bablitch: I asked her whether she had voted in the United States since her return?

The Court: Q. Well, have you?

67 A. Yes.

Q. When did you vote? This last election?

A. Yes.

Mr. Bablitch: Q. This stay in America since your return has been on an Italian passport visitor's visa, is that right?

A. That's right—an Italian diplomatic passport.

The Court: Q. Now, as you are leaving this country now, and you intend to leave with your husband?

A. Yes.

Q. On what type of passport?

A. I have hoped to travel on my American passport, but—

Q. Have you made an application for an American passport?

A. Well, I didn't—I couldn't, I didn't think, until—

Q. Well, have you made an application for an American passport?

A. No.

Q. Have you made an application for any passport?

A. No, no passport, no.

Mr. Alstad: Q. The only reason that that diplomatic passport was issued to you was because the consulate over in Rome, the American consulate advised you that that was the quickest way you could get back to America?

68 A. That's right, because by the time they could consult the State Department again, and communicate with Rome—my mother was in a very serious condition; they advised me the quickest thing to do at that point was to take that Italian diplomatic passport, which would also facilitate my traveling, because, it being diplomatic, I could have a priority that you couldn't have had ordinarily.

The Court: Q. Is there anything you can think of now that hasn't been asked, which you want to state to the Court, or do you think it has all been fully covered?

A. No. I just hope the Court understands—I mean, I have always considered I have never lost my American citizenship. I have always considered La Crosse to be my home.

Q. In other words, you want the Court to understand you never intended to revoke or renounce your allegiance to this American government?

A. Absolutely, that is right, never.

Q. And you never intended to become a citizen of Italy?

A. That's right.

Q. That is what you want the Court to understand? All right, that is all.

(Witness Excused.)

69 ALESSANDRO SAVORGNAN, called as a witness on behalf of the plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Alstad.

Q. Will you give the Court your full name?

A. Alessandro Savorgnan.

Q. When you were contemplating marriage, did you seek any legal advice as to what the status of your wife's citizenship would be after your marriage?

A. Yes, I did.

Q. Who did you talk to?

A. I talked to some attorneys, lawyers, friends. I alked to some attorneys, some lawyer friends of mine in t. Louis.

Q. What were their names?

A. One was—I talked to several attorneys. I remember that I talked in particular to Fred G. Mansa, and Claude Delletier, who—the latter was Legal dviser of the Italian Vice Consulate in St. Louis at that ime.

Q. And these lawyers were familiar with immigration laws and citizenship matters?

0 A. Yes, they were familiar.

Q. And what, in effect, did they advise you?

A. They advised me that whatever steps would be taken y my wife in order to acquire Italian citizenship would ot affect her status as an American citizen, according to heir opinion.

Q. Did you have any other information available at hat time, which led you to believe that your wife's status ould not be affected?

A. Yes, I had some other information. The head legal man in the Italian diplomatic service ad married, years before, an American citizen. And I as sure that that person had maintained her American itizenship.

Q. In other words, this colleague of yours that married his American citizen—

A. Yes.

Q. (Continuing) —his wife did not lose her American tatus?

A. No—in spite of the fact that she undertook steps hat were similar to those that I asked my wife to undertake.

Q. And you advised your wife that whatever she was loing at that time would not affect her American status?

71 A. That is correct.

The Court: Q. Did you think that your wife at hat time could acquire and maintain a dual citizenship in oth countries?

A. Well, in fact she would have in any case, because, even if she had not taken any steps before her marriage o acquire the Italian citizenship, under the Italian laws

she would have automatically acquired the Italian citizenship by the simple fact of marrying an Italian citizen.

The Court: I see.

Mr. Alstad: Q. That is an Italian law?

A. Yes.

Q. Now, your diplomatic passports expired recently, didn't they?

A. No, not the passport. Diplomatic passports usually do not expire.

Q. Didn't you forward them to Washington for extension?

A. Yes, that is correct.

When I came to this country, I came on a diplomatic visa, granted me by the State Department. I expected at first to stay in this country about two months. At the expiration of these two months, I still had to continue my staying here; and therefore I sent my passport
72 to the Italian Embassy in Washington, in order that they would ask the State Department for an extension of my permission to reside in the country.

At that time I thought that I would send in also my wife's passport, because I believed her period had expired too.

Q. What did they advise you about your wife's passport?

A. I heard from the Italian Embassy in Washington that the State Department had not considered the application for an extension of her permit to remain in the United States, because she could stay here as long as she liked, because she was an American citizen.

Cross-Examination by Mr. Bablitch.

Q. Do you know who prepared this—strike that.

When did you meet your wife?

A. In January, 1940—early in January, 1940, or late in 1939, I cannot remember the exact date.

Q. And did you keep steady company with her from the outset? Did you go with her from the outset, after meeting her?

A. Well, yes. I met her, and then we saw ea
73 other very often, because we were living at the same hotel. She was living with her brother, in an apartment there.

Q. Yes, and how long did you go together before you decided you ought to get married?

The Court: Is that material? I don't think that is material.

Mr. Bablitch: Your Honor, the first application in connection with this matter was of record in March, 1943, and they start keeping company in December, 1940. There was only a three months period—

Mr. Alstad: March, 1943?

Mr. Bablitch: The first application made by the petitioner is dated in March of 1941; and according to this gentleman's testimony, they began keeping company in December of 1939, or was it '40?

The Witness: December, '39. December, '40, we were married.

Q. I see. So you had been keeping company a long time before you got married?

A. Yes, over a year.

Mr. Bablitch: Yes—well, I apologize.

The Witness: I think over a year, or nearly a year.

Mr. Bablitch: I apologize.

Q. I show you the government's Exhibit No. 1.

74 A. Yes.

Q. Which your wife testified she signed but did not understand, at St. Louis, on March 23rd, 1940.

A. Yes, that is correct.

Q. Did you ever see the original of that?

A. Yes, I did.

Q. Is that a form that anyone who wants to get Italian citizenship must fill out?

A. Well, it is and it isn't—in as much as it isn't given in a blank. But it is the usual form that one would write, and that one finds in manuals.

Q. Did you prepare that for your wife?

A. Yes, I did.

Q. She was not your wife at the time?

A. No, she wasn't my wife at the time—my future wife.

Q. Did you explain it to her?

A. No. I explained to her that it was a document that she had to sign in order to get the necessary permission for me to marry her.

Q. That was not strictly true, was it?

A. It was strictly true. It was strictly true.

Q. Isn't it true that men who were serving in the same

capacity as you were were marrying American girls, or other girls of a foreign nationality, with the permission
75 of the government of Italy, without those girls they were marrying renouncing their American citizenship or applying for Italian citizenship?

A. I don't know if I understand correctly your question. I am sorry.

Q. Maybe this will help you.

A. Yes.

Q. Do you know about the Italian decree law of October 23rd, 1925, which provided as follows:

"Officials of the diplomatic consular career are not permitted to contract marriages without previously having obtained royal consent."

A. Yes.

Q. You knew of that law?

A. Yes.

Q. You know of it now?

A. Yes, I knew of that law at that time.

Q. Yes. Now, in obtaining royal consent, there was an application by the consular officer who wanted to marry the foreign girl, wasn't there?

A. Yes, but may I say something?

Q. Surely.

A. After that law there came another regulation, having the strength of a law, saying that royal consent
76 must be denied to officers of the Italian diplomatic service—of course, I don't know the exact words; I am giving the best translation I can by heart—will be denied, that send in an application to marry girls that are not in possession of the Italian citizenship.

Q. And you say such a rule was in effect at the time that you wanted to get married?

A. Such a rule was definitely in effect.

Q. Do you know whether or not other Italian consular officers, either who married American girls or married girls of another nationality after this rule that you spoke of went into effect, acquired or got permission from the government to marry those girls, without those girls renouncing their native citizenship—in exceptional cases?

A. It isn't that the girls had to renounce their native citizenship. They had to acquire the Italian citizenship.

Q. All right.

A. And I know of persons, of colleagues of mine who

have married foreign girls, who had to be granted the Italian citizenship before, in fact, they could not apply for the royal consent unless they would state and prove that their intended wife would be or had already the Italian citizenship.

77 Q. Already had Italian citizenship?

A. Yes.

Q. After this rule went into effect you are speaking about, is that right?

A. Yes.

Q. Then it is your position that you could not marry an American girl without her acquiring Italian citizenship?

A. Yes.

Q. And still remain in the consular service, is that correct?

A. Yes, that is correct.

Q. All right. Now, while you state that you did not explain—strike that.

As I understand your testimony, you advised your wife—and she has so testified—that at the time she signed that application, it was your understanding, after contacting legal counsel, that she would not lose her American citizenship?

A. Yes, that was my understanding.

Q. Yes, but you did explain to her also, did you not, that by that application, if it were granted, she would acquire Italian citizenship, did you not?

A. Yes, I may have said so. I am not—

Q. Yes, and you explained to her, later on, at Chi-

78 cago, that the procedure that went on there was the culmination of her acquiring Italian citizenship?

A. Well, the explanation that I gave my wife all the time, since my wife was concerned at the time about—well, being an American, and so on, and I told her that I couldn't get married unless she took certain steps and so on. Her main concern was to be sure that she would remain an American citizen. That is also why I received legal counsel. And whatever explanation I gave her, I assured her—I mean, it wasn't discussed, such and such details—I mean it happened many years ago, and my memory may betray me—especially this assurance I gave her: It was my understanding, after having seeked advice from persons that I trusted, and that were supposed to know, that she would not lose her American citizenship.

Q. Yes, but you did explain to her that this process that began with the application in March, and the citizenship grant by the king of Italy in August, and then the renunciation of her citizenship at Chicago in November, all in 1940, was a process whereby she was gaining Italian citizenship; but you assured her that she still retained her American citizenship?

A. Yes.

Q. But you did tell her she was gaining Italian?

79 A. Yes.

Q. Yes. Now, when did you get your orders to depart from this government, or from this country?

A. Well, the orders to depart from this country actually came the day before I left the country. That is to say, if I am not mistaken, the orders actually to depart from the country came the day before, when I was on my way from St. Louis to La Crosse with my wife.

Q. Well, when did you know that there was going to be such an order?

A. Well, I had received an order through the Italian Embassy at Washington, or through the Consulate General in Chicago, I would say more correctly, to close the Italian Vice Consulate in St. Louis, Missouri, on the 9th—on or about, I think, the 9th of July, 1941.

At that time I did not know—when I received this notice, I did not know when I was supposed to leave. In fact, I expected to leave much later.

Q. I show you government's exhibit 2, which purports to be a grant to your wife of Italian citizenship. It does not contain her signature—at least, that copy doesn't.

Do you recall what the procedure was there, at the time she was in the consulate office with you in Chicago, in

80 November of 1941, or 1940? Just tell us generally what she went through, as far as getting that paper there, that you have.

A. All right. I told her that there were some other formalities that she should accomplish before I could finally get the permission, the consent to marry her; and she would have to sign some papers at the Consulate General in Chicago.

Q. Yes. Is that all?

A. Well, then I do not recall whether I was—at that time, she was living with her parents in La Crosse. And I was living in St. Louis. Now, I do not recall whether we

met in Chicago, or whether I went to La Crosse and then we drove to Chicago together. That I don't remember.

Q. Yes. Well, you went to Chicago there, together?

A. Yes. We were together in Chicago and she signed this document, which she had to sign, which was in the Italian language.

Q. Yes. Is there any ceremony in connection with assuming Italian citizenship?

A. Not any special ceremony.

Q. Now, just what is the ceremony?

A. There is no ceremony performed, no ceremony
81 officially.

Q. Isn't there one that was followed at the consulate in St. Louis, to which you were attached?

A. No, that is not a ceremony. In fact, technically speaking, the Italian citizenship was bestowed upon her when the decree was issued.

Q. And that decree was issued in August?

A. The decree was issued in—I don't remember the date. I mean, I haven't seen it for a long time.

Q. Yes, well, according to that document (indicating), that is the date?

A. That is correct. I mean, it is a point, whether the citizenship can be bestowed when the decree is issued, and then the person who is named in the decree has to perform certain acts, among which is an act similar to the one described here—I mean, to sign a paper.

The Court: Q. Was there any court procedure of any kind, whereby she had to go into court?

A. No.

Q. It was all done in the office?

A. In the office of the Consulate General.

Q. Did she have to do anything at all to acquire that, outside of signing that application?

82 A. No. She signed this application; it was prepared at the office, and she signed it.

Q. That's all?

A. There are no solemn formalities.

Q. Do you know how they acquire citizenship in this country? They come into a federal court—

A. Yes, I am familiar with that. We don't have that formality.

Mr. Bablitch: Q. No salute of any kind, in effect?

A. No salute of any kind.

Q. Nothing?
A. No salute of any kind.
Q. Where do the witnesses stand?
A. They were around in the room. You know—I don't know, maybe this ceremony, I have never seen it performed in the country, in Italy. The first time I have seen it performed is in the Consulate General in Chicago, and there were no formalities whatsoever.
The Court: Q. So far as you know, there was no ceremony attached?
A. I mean, they were sitting around, and that is all there is to it. I mean there were no formalities.
Q. It just went through?
A. It just went through, started to talking about
83 different things.
Q. At least there wasn't anything there—you want the Court to believe there was nothing that happened at that time that would put her on the alert, or apprise her of the fact that she was renouncing her citizenship?
A. No, there was nothing.
Q. She didn't renounce her citizenship?
A. No, because the thing was very simply performed.
Mr. Bablitch: Q. But again, as at the time of the application was written, in March, you did explain to her that she was assuming Italian citizenship, and had acquired it in August, and that this act occurred in November in Chicago was necessary, really, to fulfill her Italian citizenship that had been granted her in August, is that right?
A. Well, I wouldn't know whether it is right. I don't have such a clear recollection of my words, whether I said completely this, which I may have said, or whether I simply insisted on the fact that it was an act that was still necessary in order to get this royal consent for our marriage.
The Court: Q. Do you recall whether she did anything other than sign the application in this matter? Did she
do anything to acquire this Italian citizenship, other
84 than to sign the application that you have before you, that you have seen?
A. Well, no, there are two—
Q. Yes, those two (indicating).
A. Yes, those two—no.
Q. That is all she did?
A. That is all, so far as I know.
Q. So far as you know. Did she at any time appear

before any Court or any state office or legation and renounce her allegiance to the United States government?

A. No, nothing of that kind.

Mr. Bablitch: Q. That document that she did execute in November, however, did contain that provision, did it not?

The Court: Q. And those documents were in Italian?

A. Those documents were in the Italian language.

Q. At that time, could your wife read the Italian language?

A. No.

Q. What was your wife doing at the time you married her? Was she employed in any business?

A. No, she was staying in St. Louis with her brother, who had some business in St. Louis.

Q. She hadn't any business training of any kind, so far as you know?

A. No. I think she had with her brother.

Q. What is that?

A. I think she had her brother—

Q. I mean she wasn't employed in any business of any kind, where she acquired any training in business?

A. No. She wasn't employed.

The Court: That is all.

Mr. Bablitch: Did you ever study Latin?

A. Yes, I did.

Q. Much of it?

A. Eight years.

Mr. Alstad: I don't see how that is germane.

Mr. Bablitch: I just wanted to ask him this question:

Q. There is a very close identity between the Italian language and the Latin language, is there not?

A. No.

Q. There is an identity, however?

A. I don't know—no, I don't think there is an identity. I could not read today a Latin text and understand it, although I know very well the Italian language.

Mr. Bablitch: That is all.

The Court: That is all.

(Witness excused.)

Mr. Bablitch: If the Court please, I would suggest that the exhibits which have been identified in behalf of the government, that we withhold offering them in evi-

dence at this time, because they are really not the best evidence. We may get them later on.

Mr. Alstad: I raise no objection to them, your Honor.

The Court: They may be withheld, and offered later.

Mr. Bablitch: All right, thank you.

The Court: We will take a recess at this time.

(The above and foregoing were all of the proceedings had on the hearing of said cause on this date.)

87 IN THE DISTRICT COURT OF THE UNITED STATES

For the Western District of Wisconsin.

I, John R. Adams, official court reporter of the District Court of the United States for the Western District of Wisconsin, do hereby certify that as such reporter I was present in said Court during its session held in the City of Wausau, in said Western District and State of Wisconsin, on Friday, the 3rd day of January, 1947, and that I then and there reported in shorthand the proceedings had on the hearing of the above entitled cause; that I thereafter caused the foregoing typewritten transcript to be prepared from my original shorthand notes, so taken at said time and place, and that the above and foregoing is a full, true, and complete transcript of said proceedings.

Dated at Madison, Wisconsin, this 9th day of January, 1947.

John R. Adams,
Official Court Reporter.

88 **EXHIBIT 1.**

On, Regio Ministero Dell'Interno Roma

La sotoscritta Signorina Rosetta Andrus Sorge di Albert O., nata a Reedsburg, Stato del Wisconsin (Stati Uniti,) il 2 maggio 1915, residente in St. Louis, Stato del Missouri, cittadina degli Stati Uniti d'America, con-la presente fa istanza affinche le venga consessa la cittadinanza italiana ai sensi dell' articolo 4 della Legge 13 giugno 1912, n. 535, come modificato dall'art. 1 del R. D. Legge 1 dicembre 1934, n. 1997, e che ad essa vengano estesi i benefici previsti nell'ultimo comma dell'articolo 4 sopra menzionato.

Con ogni osservanza,

(signed) Rosette Andrus Sorge.

St. Louis Missouri, 28 marzo 1940/XVIII.

Indirizzo:
c/o Hotel Coronado
Lindell at Spring
St. Louis, Missouri
(U. S. A.)

89 **EXHIBIT 2.**

Translation.

R. Consulate General of Italy

Victor Emannuel III

By the Grace of God and the will of the Nation
King of Italy and Albania
Emperor of Ethiopia

On this day November 23rd, 1940, 19th of the Fascist Era, in the Chancery of this Royal Consulate General in this post, Miss Rosetta Andrus Sorge, daughter of Lucinda E. Wheeler and Alberto O. Sorge, born in Reedsburg, Wisconsin, the second of May 1915, to whom in virtue of Article 4 of the law of June 13, 1912 #555 modified by article 1 of the Royal Decree Law of the first of December 1934 #1997, is conceded the Italian citizenship with the Royal Decree law of August 23, 1940 XVIII, registered in the Corte dei Conti on September 26 the u. s., came before us, Comm. Riccardo Moscati, R. Consul General in this post, invested with the functions of Civil status official.

The person in question, having been requested to take an oath as prescribed by article 5 of the aforementioned law, as prescribed in article 5 of the R. Decree 2d of August 1912, #949 pronounced the following words:

"I, Rosetta Andrus Sorge, born an American citizen, declare I renounce and in truth do renounce my American citizenship, and swear to be faithful to H. M. the King
90 **of Italy and Albania, Emperor of Ethiopia, to his royal successors, and to loyally observe the statutes and other laws of the Kingdom of Italy."**

Present were as witnesses Mr. Giuseppe Dall'Agnel fu Antonio age 58, native of Molvena Prov. of Vicenza, Royal Chancellor attached to this R. Consulate General, and the lawyer Edoardo a Fiori di Giovanni, age 41, native of San Vito, Cadore, Prov. di Belluno, Legal attache of this R. Consulate General.

And we, R. Consulate General, have written in 5 copies, the present document that comes from us, Miss Rosetta Andrus Sorge and the undersigned witnesses.

(Signed) Rosetta Andrus Sorge,
G. Dall'Agnol,
Eduardo A. Fiori.

R. Moscato
(Seal of the R.
Italian Consulate
Chicago)

91 EXHIBIT 3.

Form No. PR-1 To be Prepared in Duplicate

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

FOREIGN OFFICIAL STATUS NOTIFICATION

900060 (Division of Protocol
Mar. 6, 1941
Department of State)

Date February 5, 1941

To the Secretary of State:

In accordance with applicable instructions attached hereto, and in connection with the act of June 15, 1917, the act of June 8, 1938, as amended, the act of June 28, 1940, the act of July 1, 1940, and the act of September 16, 1940, I desire to submit the following information for the purpose of regularizing my official status and of claiming any exemption from registration accorded my status under the above-mentioned Acts and regulations promulgated thereunder:

1. Full name Rosette Andrus Savorgnan.

2. Name of government and agency or department thereof, if any, being served...//.....

3. Present nationality Italian.

4. Previous nationality or nationalities, if any American, U. S. A.

5. (a) Place of birth Reedsburg, Wisconsin, U. S. A.
(b) Date of birth May second 1915.

92 6. Port or place, date and manner of last arrival in the United States and name of vessel, if any..//...

7. Status under which last admitted (check one):
Immigrant Temporary visitor
Government official or employee Other
(Please describe)

8. Name used at time of last entry, if different from present name..../...

9. Name and nationality of husband or wife, and address if separate from signer's Alessandro Savorgnan, Royal Italian Vice Consul, Italian.

10. Names, ages, and nationalities of children, and their addresses if different from signer's..../...

11. Names and nationalities of other relatives who are members of signer's household..../...

12. Names and nationalities of personal and domestic employees who are members of signer's household..//...

13. Capacity in which signer is now serving, giving title of position, if any..../...

14. Date of assumption of present duties in the United States..../...

15. Detailed statement of signer's present and pro-
93 posed activities, including the place or places of performance and for whom performed or to be performed..../...

16. Nature and place or places of occupation or employment during the last 5 years..../...

17. Business address, or addresses if more than one..../...

18. Home address in the United States, or addresses if more than one c/o Embassy Apartments, 530 North Union Boulevard, St. Louis, Missouri.

19. If declaration to become an American citizen has been filed, state the date and place of application..//..

20. If visiting in the United States temporarily as a tourist, or for personal business or pleasure, or if passing in transit through the United States, the following additional information must be furnished:

(a) Whether on private business or for pleasure and if on private business, state the agency, firm, or persons represented..../...

(b) Temporary address in United States....//.....
(c) Date of proposed departure....//.....
(d) Port or place of proposed departure....//.....
(e) Country to which proceeding....//.....

94 I will immediately notify the Secretary of State through appropriate channels of any change in my status, activities, or in the other information set forth in this notification.

(Signed) Rosette Savorgnan.

(Photograph)

Instructions.

1. This form is to be used by all officers, officials, and employees of foreign governments, or of agencies or departments thereof (other than ambassadors, ministers, and members of their missions whose names appear in the Diplomatic List), assigned to, acting, residing, or visiting in or traveling through the United States, its territories or possessions, members of their families and their personal and domestic employees, for the purpose of regularizing their official status and of claiming any exemption from registration accorded that status under the following statutes and the regulations promulgated thereunder:

(a) The act of June 15, 1917 (40 Stat. 226). This act provides, in part, that no person other than a diplomatic or consular officer or attache shall act in the United States as an agent of a foreign government without prior notification to the Secretary of State, and contains various other related provisions.

(b) The act of June 8, 1938, as amended (52 Stat. 631; 53 Stat. 1244). This act provides, in part, that every person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for the government or a political party of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation,
95 or political organization, or a domestic organization subsidized directly or indirectly in whole or in part by any of such entities, or who receives compensation from or is under the direction of any of the foregoing shall file with the Secretary of State a registration statement as prescribed therein, and contains various other related provisions. It exempts, among others, a duly accredited diplo-

matic or consular officer of a foreign government who is so recognized by the Department of State of the United States, any official, other than an American citizen, of a foreign government recognized by the United States as a government or member of the staff or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such official, member of staff or employes are of record in the Department of State.

(c) The act of June 28, 1940 (Public, No. 670, 76th Cong., 3d Sess.). This act provides, in part, that every alien (other than a foreign government official or member of his family) in the United States who is 14 years of age or older, who has not been registered and fingerprinted at the time of the issuance of a visa for entrance into the United States, and who remains in the United States for 30 days or longer, shall apply for registration and fingerprinting before the expiration of such 30 days, and contains various other related provisions.

(d) The act of July 1, 1940 (Public, No. 701, 76th Cong., 3d Sess.). This act provides, in part, that accredited officials of foreign governments, recognized by the Government of the United States, their families, attendants, servants, and employees, who fail to maintain the status under which admitted, may be required to depart from the United States, and contains various other related provisions.

(e) The act of September 16, 1940 (Public, No. 783, 76th Cong., 3d Sess.). This act provides, in part, that every male alien residing in the United States who, on the day or days fixed for registration thereunder is between the ages of 21 and 36 shall present himself for and submit to registration as prescribed therein, and contains various other related provisions. It exempts from such registration diplomatic representatives, technical attaches of foreign embassies and legations, consuls general, consuls, vice consuls, and consular agents of foreign countries, who are not citizens of the United States, and who have not declared their intention to become citizens thereof.

96 2. All statements should be in English or be accompanied by an English translation. The statements, with the exception of signature, should be typewritten but will be accepted if written legibly in ink.

3. All spaces in the form should be properly filled in.

If they are not so filled in, the form will not be accepted by the Secretary of State for filing.

4. Where space does not permit full statements, the information required may be set forth in supplementary papers incorporated by reference in the form and submitted therewith.

5. Acceptance by the Secretary of State of this form for filing shall not necessarily signify a full compliance with the above-mentioned acts and shall not preclude such action as may be deemed necessary and permissible under such acts by the Government of the United States. Nor shall the submission or acceptance thereof be regarded as a claim for or a recognition of the privilege of diplomatic immunity conferred by international law or custom.

6. The date on which the form properly filled out is received by the Secretary of State shall be considered the date of filing thereof.

7. No person required to register or to file a registration statement (as distinguished from the notification statement, required by the act of June 15, 1917) under any other of the above-mentioned acts or the regulations promulgated thereunder is relieved of that duty by filing this form.

8. Any return to the United States from a visit of less than 6 months in Canada or Mexico should not be reported as a last arrival in item No. 6.

9. Each wife or husband referred to in item No. 9 must file a separate form if in the United States.

10. All children, referred to in item No. 10, who are 14 years of age or over, who are not citizens of the United States and who are in the United States in the status of a member of the family of a foreign government official, must each file a separate form.

11. Each relative referred to in item No. 11 must file a separate form.

97 12. Each personal or domestic employee referred to in item No. 12 must file a separate form.

13. With reference to item No. 15, give the precise nature of present and proposed activities and the place where they are to be performed, and the name of the government or persons represented. Information should be given in detail of not only the proposed official activities which are to be carried on in this country, but also of any other employment or activities which are to be carried on in this country on behalf of a foreign government,

agency, corporation, or person, with particular reference as to whether signer is acting or intends to act as a public-relations counsel or publicity agent as defined in the regulations promulgated under the act of 1938, and whether signer intends to engage in any political or other activities on behalf of any foreign country or party, other than that specifically disclosed.

14. The Secretary of State must be immediately notified of any change in status or in the nature of the activities disclosed herein.

15. A supply of this form may be obtained on written request to, or by telephoning the Department of State, Washington, D. C. (Telephone: Republic 5600, Branch 266.)

98 **EXHIBIT 4.**

130—Savorgnan
LC. egt.

AMERICAN CONSULAR SERVICE.

AMERICAN CONSULATE

Rome, Italy, January 24, 1945

Department of State
Mrs. Rosette Andrus Savorgnan,
91 Via Barnaba Oriani,
Rome.

Madam:

The Consulate refers to the application for registration as an American citizen which you executed on October 23, 1944, and is pleased to inform you that it has been approved by the Department of State at Washington.

Very truly yours,
(Signed) Linton Crook,
American Vice Consul.

99 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

AFFIDAVIT.

Edgar M. Alstad being first duly sworn on oath deposes and says:

1. That on the 3rd day of January, 1947, when testimony was taken in the above entitled matter it was stipulated by and between the Assistant United States Attorney and Attorney for the Plaintiff, that petitioner's counsel present an Affidavit at the time of trial, that either or both of the witnesses Rosette Sorge Savorgnan and Alessandro Sanorgnan were still outside of the continental United States.

That affiant has received a letter from the Savorgnans, copy of which together with the envelope is attached hereto.

That to my best knowledge and belief the Savorgnans are still outside the continental limits of the United States.

Dated: 25 June, 1947.

/S/Edgar M. Alstad.

Subscribed and sworn to before me this 26th day of June, 1947.

/S/ Walter A. Lapinske,
Deputy Clerk U. S. District Court, Western District of Wisconsin.

(Seal)

100 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

STIPULATION.

(Filed 8/19/47, Herbert C. Hale, Clerk.)

It Is Hereby Stipulated And Agreed by and between the parties hereto, by their respective attorneys, that the affidavit of Rosette Sorge Savorgnan, subscribed and sworn to on February 12, 1946 before A. E. E. Mason, Notary Public, District of Columbia, which is attached hereto without the exhibits referred to therein, shall be marked as Exhibit 5 and considered a part of the record in the above-entitled case.

August 18th, 1947.

Edgar M. Alstad,
Attorney for the Plaintiff.

August 15, 1947.

James E. Doyle,
Assistant United States Attorney, Attorney for the Defendant.

102 AFFIDAVIT.

United States of America, } ss.
District of Columbia. }

Rosette Sorge Savorgnan having been duly sworn, deposes and says:

1. I was born at Reedsburg, Wisconsin on May 2, 1915, as shown by attached birth certificate (Exhibit A); my parents Albert O. Sorge, and Lucinda Wheeler Sorge were both native born Americans, having been born in Reedsburg, Wisconsin.

2. From the date of my birth until July, 1941, I resided continuously in the United States and never before left the country.

3. On or about 1 August 1940 I applied, at the sugges-

tion of my then intended husband, through the Italian Consulate at Chicago, Illinois for Italian citizenship. This application was made pro forma, and solely for the purpose of my husband obtaining permission from the Italian Government as a Diplomat, to marry a foreigner. The application was written in the Italian language (see Ex. B) (see also Exhibit D).

4. On or about 20 November, 1940 as a final step in the process of obtaining the aforesaid naturalization, I signed an oath of allegiance, pro forma, to the King of Italy. This oath was also written in the Italian language (See Exhibit C).

5. On 26 December, 1940, having obtained the necessary technical Italian citizenship, as indicated in Pars. 3 and 4 above, I married Alessandro Savorgnan, a diplomatic
103 officer in the Italian Foreign Service. We were married at Waukon, Iowa. Mr. Savorgnan was at that time Italian Vice Consul at St. Louis, Missouri, having served in this post since 1936.

6. On or about 15 July, 1941, Mr. Savorgnan, along with other consular personnel throughout the United States, was compelled, by executive order, to leave the country. Practically without notice and without opportunity for any planned or considered departure, I accompanied my husband (upon the SS Westpoint) to Italy. No time was permitted for me to obtain an American passport before my departure.

7. Due to the outbreak of war and its continuation subsequent to my leaving the United States, I was compelled to remain outside of the United States from the time of my departure in 1941, until my return in 1945. It is unnecessary to accentuate the fact that my continued absence from the United States was due exclusively to war time conditions. In no sense can a logical deduction be made that my leaving the country was made for the purpose of taking up a permanent residence abroad. Even though Mr. Savorgnan is still abroad, I intend to maintain forever, my permanent residence in the United States, and while I may accompany Mr. Savorgnan for limited periods during his assignments to foreign posts, I nevertheless have no intention whatsoever of abandoning my permanent residence in the United States or divesting myself of my American citizenship.

8. On or about 19 June 1944, upon the entry of the

United States Army into Rome, I immediately identified myself to our American Military Authorities. At once I was employed by the Allied Control Commission and served with it continuously until my return to the United States in 1945.

104 9. On or about 15 October 1944, upon the reopening of the U. S. Consulate in Rome, I applied through regular procedure for registration as an American Citizen.

10. On or about 1 January 1945 the American Consulate at Rome notified me in writing that the Department of State had approved my registration as an American citizen and that I should appear at the Consulate not later than October 23, 1946 in order to renew the registration and prevent its expiration.

11. Between January and April 1945, both the U. S. Army, U. S. Navy Authorities arranged transportation for my return to the United States. Upon my request to the U. S. Consul at Rome for my passport, I was informed that a passport would not be issued; that since my registration the case was being reconsidered and that the outcome was pending in the State Department (Washington). No other information was given me.

12. On or about 1 June 1945, I was advised by the U. S. Consul at Rome that the State Department was of the opinion that I had expatriated myself under Section 2, Act of March 2, 1907; and that no passport would be issued. I was advised, however, that I would be given a visitor's visa.

13. At the first opportunity afforded me I returned to the United States under a visitor's visa, entering the country at the port of Boston, Mass., on Nov. 1, 1945.

14. I was admitted to the United States as indicated above on an Italian Diplomatic Passport, (No. 111) dated 30 May, 1945, bearing a visa granted under Section
105 3 (2) as a visitor for a period of x x months.

15. I particularly wish to emphasize that it was my intention upon departure from the United States not to take up permanent residence abroad, and also that I have never established a permanent residence abroad. The reasons for my departure, as indicated by the circumstances stated above, were merely of a marital and compassionate nature. As a matter of fact, there were substantial reasons for my belief that my sojourn from the United States would only be a temporary one. In this regard no evidence or

any other proof has been adduced by the State Department or other Government agency that shows any intention to take up permanent residence abroad.

16. While not being conversant with all of the laws, policies, etc., governing nationality and expatriation, it was likewise my firm intention to in no way divest myself of my American citizenship. The Act of March 2, 1907, under which the State Department maintained I expatriated myself, was repealed on January 13, 1941 by the Nationality Act of 1940. My departure from the United States as stated above, did not occur until 15 July, 1941—or 6 months after the law of 1907 had become non-effective. Because of this fact, but more especially because I have never taken up permanent residence abroad, it is apparent that I cannot be considered as having expatriated myself. As stated above, application for Italian citizenship and oath of allegiance were executed prior to January 13, 1941,—consequently the execution of these papers could not cause my expatriation under the National Act of 1940. Neither have I performed any other act which might be considered justification for denying me the status of an American citizen.

106 17. In accordance with the aforesaid facts, I hereby request the Commissioner of Immigration and Naturalization at Philadelphia to amend and correct the record of my admission to the United States to show my status as an American Citizen at the time of my entry into the United States.

Further deponent saith not.

/s/ Rosette Sorge Savorgnan.

Subscribed and sworn to before me this 12th day of February, 1946.

/s/ A. E. E. Mason,
Notary Public, District of Columbia.

(Notarial Seal)

My Commission expires December 14, 1948.

107 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—1738) * *

MEMORANDUM OPINION.

(Filed 9/10/47, Herbert C. Hale, Clerk.)

In this action plaintiff seeks judgment declaring that she is an American citizen.

It appears from the proofs submitted that plaintiff was born at Reedsburg, Wisconsin, on May 2, 1915; that her parents were both native born Americans. From the date of her birth until July 15, 1941, she resided continuously in the United States; that on or about August 1, 1940, at St. Louis, Missouri, at the suggestion of her then intended husband, Alessandro Savorgnan, she applied through the Italian Consulate at Chicago, Illinois, for Italian citizenship. The application was made solely for the purpose of obtaining consent from the Italian Government to her marriage to Savorgnan, who was at that time in the Diplomatic Service of Italy and located in this country. On November 23, 1940, at Chicago, Illinois, the plaintiff, at the request of said Savorgnan, signed an oath of allegiance to the Italian Government. The application and oath were written in Italian. Plaintiff at that time could not read, write, or understand that language. She assumed that the signing of the documents was but a step in obtaining consent of the Italian Government to her marriage.

108 Plaintiff married Alessandro Savorgnan on December 26, 1940, at Waukon, Iowa. He was at that time Italian Vice Consul at St. Louis, Missouri, having served in that post since 1936.

On February 5, 1941, she signed a form filled out in the English language and prepared by her husband, required to be filed with the United States Department of State by members of the families of foreign diplomats residing in the United States, and in this form she listed her present nationality as Italian.

On or about July 15, 1941, Savorgnan, along with other consular personnel throughout the United States, was compelled, by executive order, to leave the country. Practically without notice and without any opportunity for any

planned or considered departure, plaintiff accompanied her husband to Italy. No time was permitted for her to obtain an American passport before her departure and she departed from this country on a foreign visitor's visa.

Due to the outbreak of the war and its continuation subsequent to her arrival in Italy, she was compelled to remain in that country from July 1941 until she returned to the United States in 1945. Her absence from the United States was due to the war time conditions. In July 1941 when she left this country for Italy she did so without any intention of establishing a permanent residence abroad or abandoning her residence in the United States, or of divesting herself of her American citizenship.

On June 19, 1944, upon the entry of the United States Army into Rome, she immediately identified herself with the American Military Authorities and was thereafter employed by the Allied Control Commission and served with it continuously until she returned to the United States in 1945.

109 On October 15, 1944, upon the reopening of the United States Consulate in Rome, she applied through the regular procedure for registration as an American citizen.

On January 1, 1945, the American Consulate at Rome notified her in writing that the Department of State had approved her registration as an American citizen, and directed her to appear at the Consulate not later than October 23, 1946, to renew the registration and prevent its expiration.

Between January and April 1945, both the U. S. Army and the U. S. Navy Authorities arranged transportation for her return to the United States. Upon her request to the U. S. Consul at Rome for her passport, she was informed that a passport would not be issued inasmuch as her registration was being reconsidered and that the outcome was pending in the State Department in Washington.

On June 1, 1945, she was advised by the U. S. Consul at Rome that the State Department was of the opinion that she had expatriated herself and that no passport would be issued. She was advised, however, that she would be given a visitor's visa. She returned to the United States on November 1, 1945, on an Italian Diplomatic Passport. While she was awaiting the decision of the State Department with reference to her status as an American citizen she re-

ceived word of her mother's serious illness and made plans to promptly return to this country, and it was for that purpose she used the Italian Diplomatic Passport. Her mother died before she arrived in Wisconsin.

The plaintiff testified that at the time she signed the application for Italian citizenship and the oath of allegiance to the Italian Government, she simply signed the two documents, Exhibits 1 and 2, without any formal proceed-
110 ings. Both documents were signed in this country before an Italian officer and not before any official of the United States Government. At the time she signed the documents she had no intention whatsoever of renouncing her allegiance to this country, or establishing a permanent residence in any other country. After her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States, but was in fact, at the first opportunity, employed in Italy by the Allied Control Commission.

Plaintiff relied on her husband's statement and assurance, that by signing the documents identified as Exhibits 1 and 2, she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship. She never voted at any election in Italy but did vote in Wisconsin before and after her marriage.

I am satisfied from the proofs submitted that at the time plaintiff signed Exhibits 1 and 2 she had no present or fixed intention in her mind to expatriate herself. She remained in this country for about seven months after signing the documents in question.

> "Expatriation is a matter of intent on the part of the person concerned, which intent must be shown by some express act or some other act from which it can be gathered."
>
> *Perkins, Secretary of Labor et al.* v. *Elg*, 99 F. 2d 408.

> "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance."
>
> *Perkins, Secretary of Labor et al.* v. *Elg*, 307 U. S. 325.

Knowledge is necessary to intention. If plaintiff, at the time she executed Exhibits 1 and 2, did not know or realize that she was renouncing allegiance to this country, her action was unintentional and of no validity.

111 Intention is a fact to be proven, and it clearly appears from the proofs submitted in this action that the plaintiff did not intend at the time she signed the documents in question to divest herself of her American citizenship or to establish a permanent residence abroad. Forsaking her country, departing therefrom, and knowingly renouncing her allegiance to it are essential requirements to expatriation. The plaintiff did not knowingly renounce or relinquish her American citizenship and is entitled to judgment declaring her to be an American citizen.

Dated: September 10, 1947.

Patrick T. Stone,
United States District Judge.

112 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—1738) * *

FINDINGS OF FACT, CONCLUSION OF LAW AND JUDGMENT.

(Filed 9/10/47, Edgar M. Alstad, Clerk.)

The above-entitled action having come on for trial at the present term of the above named court; Edgar M. Alstad, Madison, Wisconsin, appearing for the plaintiff; Charles H. Cashin, United States Attorney, and James E. Doyle, Assistant United States Attorney, appearing for the defendants; and the Court having considered the proofs and briefs submitted by the parties, and being fully advised in the premises makes the following Findings of Fact and Conclusion of Law:

Findings of Fact.

1. That the plaintiff, Rosette Sorge Savorgnan, was born at Reedsburg, Wisconsin, on May 2, 1915; that her parents were both native born Americans. From the date of her birth until July 15, 1941, she resided continuously in the United States; that on or about August 1, 1940, at St. Louis, Missouri, at the suggestion of her then

intended husband, Alessandro Savorgnan, she applied through the Italian Consulate at Chicago, Illinois, for Italian citizenship. The application was made solely for
the purpose of obtaining consent from the Italian
113 Government to her marriage to Savorgnan, who was at
that time in the Diplomatic Service of Italy and located in this country. On November 23, 1940, at Chicago, Illinois, the plaintiff, at the request of said Savorgnan, signed an oath of allegiance to the Italian Government. The application and oath were written in Italian. Plaintiff at that time could not read, write or understand that language. She assumed that the signing of the documents was but a step in obtaining consent of the Italian Government to her marriage.

2. That the plaintiff married Alessandro Savorgnan on December 26, 1940, at Waukon, Iowa. He was at that time Italian Vice Consul at St. Louis, Missouri, having served in that post since 1936.

3. That on February 5, 1941, plaintiff signed a form filled out in the English language and prepared by her husband, required to be filed with the United States Department of State by members of the families of foreign diplomats residing in the United States, and in this form she listed her present nationality as Italian.

4. That on or about July 15, 1941, Savorgnan, along with other consular personnel throughout the United States, was compelled, by executive order, to leave the country. Practically without notice and without any opportunity for any planned or considered departure, plaintiff accompanied her husband to Italy. No time was permitted for her to obtain an American passport before here departure and she departed from this country on a foreign visitor's visa.

5. Due to the outbreak of the war and its continuation subsequent to plaintiff's arrival in Italy, she was compelled to remain in that country from July 1941 until she returned to the United States in 1945. Her absence from the United States was due to the war time conditions. In July 1941 when she left this country for Italy she did so without
any intention of establishing a permanent residence
114 abroad or abandoning her residence in the United
States, or of divesting herself of her American citizenship.

6. On June 19, 1944, upon the entry of the United

States Army into Rome, plaintiff immediately identified herself with the American Military Authorities and was thereafter employed by the Allied Control Commission and served with it continuously until she returned to the United States in 1945.

7. On October 15, 1944, upon the reopening of the United States Consulate in Rome, plaintiff applied through the regular procedure for registration as an American citizen.

8. That on January 1, 1945, the American Consulate at Rome notified plaintiff in writing that the Department of State had approved her registration as an American citizen, and directed her to appear at the Consulate not later than October 23, 1946, to renew the registration and prevent its expiration.

9. That between January and April 1945, both the U. S. Army and the U. S. Navy Authorities arranged transportation for plaintiff's return to the United States. Upon her request to the U. S. Consul at Rome for her passport, she was informed that a passport would not be issued inasmuch as her registration was being reconsidered and that the outcome was pending in the State Department in Washington.

10. That on June 1, 1945, plaintiff was advised by the U. S. Consul at Rome that the State Department was of the opinion that she had expatriated herself and that no passport would be issued. She was advised, however, that she would be given a visitor's visa. She returned to the United States on November 1, 1945, on an Italian Diplomatic Passport. While she was awaiting the decision of the State Department with reference to her status as an American citizen she received word of her mother's serious illness and made plans to promptly return to this county, and it was for that purpose she used the Italian Diplomatic
115 Passport. Her mother died before she arrived in Wisconsin.

11. That at the time plaintiff signed the application for Italian citizenship and the oath of allegiance to the Italian Government, Exhibits 1 and 2, she did so without any formal proceedings. Both documents were signed in this country before an Italian officer and not before any official of the United States Government. At the time she signed the documents she had no intention whatsoever of renouncing her allegiance to this country, or establishing

a permanent residence in any other country. After her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States, but was in fact, at the first opportunity, employed in Italy by the Allied Control Commission.

12. That plaintiff relied on her husband's statement and assurance, that by signing the documents identified as Exhibits 1 and 2, she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship. She never voted at any election in Italy but did vote in Wisconsin before and after her marriage.

13. That plaintiff remained in this country for about seven months after she signed the documents in question. At the time she affixed her signature thereto she had no present or fixed intention in her mind of renouncing her allegiance to this country, and in fact never did intend to divest herself of American citizenship.

14. That the plaintiff did not knowingly renounce or relinquish her American citizenship.

Conclusion of Law.

1. That the plaintiff is entitled to judgment adjudging that she now is and has been since the date of her birth, a citizen of the United States of America.

116 Judgment.

On the foregoing Findings of Fact and Conclusion of Law,

It Is Adjudged and Decreed That plaintiff, Rosette Sorge Savorgnan, never lost or relinquished her United States citizenship, and that she is now and has been since the date of her birth a citizen of the United States of America.

Dated this 10th day of September, 1947.

Patrick T. Stone,
United States District Judge.

And afterward, to-wit, on the tenth day of February, 1948, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

February 10, 1948.

Before:

Hon. William M. Sparks, Circuit Judge.

Rosette Sorge Savorgnan, *Plaintiff-Appellee,* vs. The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service, *Defendants-Appellants.*	Appeal from the District Court of the United States for the Western District of Wisconsin.
9550	

Pursuant to stipulation of counsel, it is ordered that the heading of the "Stipulation as to the Record on Appeal," dated January 15, 1948, which constitutes a part of the record on appeal heretofore certified to this Court by the Clerk of the United States District Court for the Western District of Wisconsin, be, and the same is hereby, amended to show as parties defendants, the United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service.

Pursuant to further stipulation of counsel, it is ordered that Watson B. Miller, Commissioner of Immigration and Naturalization, be, and he is hereby, substituted as a party defendant-appellant for Ugo Carusi, Commissioner of Immigration and Naturalization Service.

117 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

For the Western District of Wisconsin.

Rosette Sorge Savorgnan,
Plaintiff,
vs.
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
Defendants.
} Civil No. 1738.

NOTICE OF APPEAL.

(Filed 12/8/47. Edgar M. Alstad, Clerk.)

Notice is hereby given that the United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service, defendants above named, hereby appeal to the Circuit Court of Appeals for the Seventh Circuit from the final judgment entered in this action on September 10, 1947.

Charles H. Cashin,
United States Attorney, Western District of Wisconsin, Attorney for the Defendants.

By James E. Doyle,
Assistant United States Attorney, Western District of Wisconsin.

And afterward, to-wit, on the tenth day of November, 1948, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

November 10, 1948

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Luther M. Swygert, District Judge.

Rosette Sorge Savorgnan, *Plaintiff-Appellee,* vs. The United States of America, Tom C. Clark, the Attorney General for the United States of America and Watson B. Miller, Commissioner of Immigration and Naturalization Service, *Defendants-Appellants.*	9550	Appeal from the United States District Court for the Western District of Wisconsin.

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Carlisle P. Runge, counsel for the appellants, and by Mr. Carl A. Flom, counsel for the appellee, and the Court takes this matter under advisement.

118 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL.

(Filed 1/15/38. Edgar M. Alstad, Clerk.)

Defendants, United States of America, et al., propose on their appeal to the Circuit Court of Appeals for the Seventh Circuit to rely on the following points as error:

1. The District Court erred in finding as a fact that plaintiff's application for Italian citizenship on or about August 1, 1940, "was made solely for the purpose of obtaining consent from the Italian Government to her marriage to Savorgnan".

2. The District Court erred in finding as a fact that when plaintiff signed an oath of allegiance to the Italian Government on November 23, 1940, at Chicago, Illinois, "she assumed that the signing of the documents was but a step in obtaining consent of the Italian Government to her marriage."

3. The District Court erred in finding as a fact that when, on or about July 15, 1941, her husband was compelled by executive order to leave the country: "Practically without notice and without any opportunity for any planned or considered departure, plaintiff accompanied
119 her husband to Italy. No time was permitted for her to obtain an American passport before her departure and she departed from this country on a foreign visitor's visa."

4. The District Court erred in finding as a fact that: "Due to the outbreak of the war and its continuation subsequent to plaintiff's arrival in Italy, she was compelled to remain in that country from July 1941 until she returned to the United States in 1945. Her absence from the United States was due to the war time conditions. In July 1941 when she left this country for Italy she did so without any intention of establishing a permanent residence abroad or abandoning her residence in the United States, or of divesting herself of her American citizenship."

5. The District Court erred in finding as a fact: "That

at the time plaintiff signed the application for Italian citizenship and the oath of allegiance to the Italian Government, Exhibits 1 and 2, she did so without any formal proceedings. * * * At the time she signed the documents she had no intention whatsoever of renouncing her allegiance to this country, or establishing a permanent residence in any other country. After her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States, but was in fact, at the first opportunity, employed in Italy by the Allied Control Commission."

6. The District Court erred in finding as a fact: "That plaintiff relied on her husband's statement and assurance, that by signing the documents identified as Exhibits 1 and 2, she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship."

7. The District Court erred in finding as a fact that: "At the time she affixed her signature thereto [the documents in question] she had no present or fixed intention in her mind of renouncing her allegiance to this
120 country, and in fact never did intend to divest herself of American citizenship."

8. The District Court erred in finding as a fact: "That the plaintiff did not knowingly renounce or relinquish her American citizenship."

9. The District Court erred in holding that plaintiff never lost or relinquished her United States citizenship and that she is now and has been since the date of her birth a citizen of the United States of America.

Charles H. Cashin,
United States Attorney, Western District of Wisconsin, Attorney for Defendants.

121 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

ORDER FOR SUBSTITUTION OF ATTORNEY.

(Filed 1/15/48. Edgar M. Alstad, Clerk.)

On the motion of Carl Flom, Attorney, Madison, Wisconsin, and with the consent of the defendant herein by its attorney, Charles H. Cashin, United States Attorney for the Western District of Wisconsin, as indicated below,

It is ordered and adjudged that Carl Flom be and he is hereby substituted for Edgar M. Alstad as attorney of record for plaintiff herein.

Dated January 15, 1948.

Patrick T. Stone,
United States District Judge.

Consent is hereby given to the entry of the foregoing order without further hearing or notice.

Charles H. Cashin,
United States Attorney, Western District of Wisconsin, Attorney for Defendant.

Dated January 12, 1948.

122 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA.

• • (Caption—1738) • •

ORDER CORRECTING PRIOR ORDER FOR SUBSTITUTION OF ATTORNEY.

(Filed 2/6/48. Edgar M. Alstad, Clerk.)

On January 15, 1948, an order was entered herein substituting Carl Flom for Edgar M. Alstad as attorney of record for the plaintiff herein. In the heading of said order, the United States of America erroneously appears as the sole defendant herein.

It is hereby ordered and adjudged that the heading of the said order of January 15, 1948, is corrected to show as defendants herein, the United States of America, Tom C. Clark, The Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service.

Dated February 6th, 1948.

Patrick T. Stone,
United States District Judge.

123 District Court of the United States of America.

Western District of Wisconsin.

I, Edgar M. Alstad, Clerk of the District Court of the United States of America, for the Western District of Wisconsin, do hereby certify that I have compared the writings annexed to this Certificate, with the originals now in my custody, and they are true copies of their respective originals and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said Court, at the city of Madison, in the said Western District of Wisconsin, this 9th day of February, in the year of our Lord, one thousand nine hundred and forty-eight and of the independence of said United States the one hundred and seventy-second.

Edgar M. Alstad,
Clerk.

(Seal)

124 In the District Court of the United States of America.

* * (Caption—1738) * *

STIPULATION AS TO THE RECORD ON APPEAL.

(Filed 1/15/48. Edgar M. Alstad, Clerk.)

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the following parts of the record, proceedings, and evidence in the above-entitled action are hereby designated to be in-

cluded and shall be included in and constitute the record on appeal to the United States Circuit Court of Appeals for the Seventh Circuit:

1. Petition for declaratory judgment.
2. Answer to petition for declaratory judgment.
3. Journal entry of November 21, 1946, showing order granting plaintiff leave to file an amended petition for declaratory judgment.
4. Amended petition for declaratory judgment.
5. Answer to amended petition for declaratory judgment.
6. Transcript of entire proceedings at hearing in the District Court at Wausau, Wisconsin, at 2 p. m. on January 3, 1947.
7. Stipulation dated August 15 and 18, 1947, for the inclusion of an affidavit of plaintiff in the record as Exhibit 5.
8. Affidavit of plaintiff's attorney, dated June 25, 1947, stating, on information and belief, that as of that date plaintiff was outside the continental limits of the United States, without letter and envelope referred to therein.
9. Findings of Fact, Conclusion of Law, and Judgment.
10. Memorandum Opinion of the District Court.
11. Notice of Appeal.
12. Order dated January 15, 1948 permitting substitution of Carl Flom for Edgar M. Alstad as attorney for plaintiff.
13. Points to be relied upon on appeal.

January 15, 1948.

Charles H. Cashin,
United States Attorney, Western District of Wisconsin, Attorney for Defendant-Appellant.
Room 241, Federal Building
Madison 1, Wisconsin.

January 15, 1948.

Carl Flom,
Attorney for Plaintiff-Appellee,
119 East Washington Avenue,
Madison 3, Wisconsin.

126 CLERK'S CERTIFICATE OF RECORD ON APPEAL.

United States District Court,
Western District of Wisconsin. } ss.

I, Edgar M. Alstad, Clerk of the United States District Court for said district, do hereby certify that I have compared the foregoing transcript with the records of this Court now remaining in my office in the case therein pending, entitled:

* * (Caption—1738) * *

and that the same is a true and correct transcript of the documents requested by the parties, and I further certify that the said transcript is composed of true copies of original documents, to-wit:

Copy of petition for declaratory judgment ..... Document No. 1
Copy of answer to petition for declaratory judgment ..... Document No. 3
Copy of journal entry of November 21, 1946, showing order granting leave to file an amended petition for declaratory judgment.
Copy of amended petition for declaratory judgment ..... Document No. 5
Copy of answer to amended petition for declaratory judgment ..... Document No. 8
Copy of transcript of entire proceedings at hearing in the District Court at Wausau, Wisconsin, at 2 p. m. on January 3, 1947 ..... Document No. 7
Copy of stipulation dated August 15 and 18, 1947, for the inclusion of an affidavit of plaintiff in the record as Exhibit 5 ..... Document No. 13
Copy of affidavit of plaintiff's attorney, dated June 25, 1947, stating, on information and belief, that as of that date plaintiff was outside the continental limits of the United States, without letter and envelope referred to therein.

Copy of Findings of Fact, Conclusions of Law, and Judgment ....Document No. 16
Copy of Memorandum Opinion of the District Court .....Document No. 15
Copy of Notice of Appeal .....Document No. 17
127 Copy of Order dated January 15, 1948 permitting substitution of Carl Flom for Edgar M. Alstad as attorney for plaintiff .....Document No. 18
Copy of points to be raised upon appeal. (20)
Finally, this certificate.

In Testimony Whereof, I have hereunto set my hand and duly affixed the seal of said Court, at the City of Madison, in the said Western District of Wisconsin, this 15th day of January, in the year of our Lord one thousand nine hundred and forty-eight, and of the Independence of the United States the one hundred and seventy-second.

Edgar M. Alstad,
Clerk, United States District Court.

(Seal)

128 UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Chicago 10, Illinois.

February 10, 1948.

Before:

Hon. William M. Sparks, Circuit Judge.

No. 9550.

Rosette Sorge Savorgnan,
Plaintiff-Appellee,
vs.
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
Defendants-Appellants.

Appeal from the District Court of the United States for the Western District of Wisconsin.

Pursuant to stipulation of counsel, it is ordered that the hearing of the "Stipulation as to the Record on Appeal," dated January 15, 1948, which constitutes a part of the record on appeal heretofore certified to this Court by the Clerk of the United States District Court for the Western District of Wisconsin, be, and the same is hereby, amended to show as parties defendants, the United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service.

Pursuant to further stipulation of counsel, it is ordered that Watson B. Miller, Commissioner of Immigration and Naturalization, be, and he is hereby, substituted as a party defendant-appellant for Ugo Carusi, Commissioner of Immigration and Naturalization Service.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed transcript of the record, filed in this office on March 9, 1948, in:

Cause No. 9550.

Rosette Sorge Savorgnan,
Plaintiff-Appellee,

vs.

The United States of America, *et al.*,
Defendants-Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of March, A. D. 1949.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the seventh day of October, in the year of our Lord one thousand, nine hundred and forty-seven, and of our Independence the one hundred seventy-second.

Rosette Sorge Savorgnan,
Plaintiff-Appellee,

9550 *vs.*

The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
Defendants-Appellants.

Appeal from the District Court of the United States for the Western District of Wisconsin.

And afterward, to-wit, on the sixteenth day of January, 1948, there was filed in the office of the Clerk of this Court an appearance of counsel for the appellants, which said appearance is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Rosette Sorge Savorgnan,
Plaintiff-Appellee,
vs.
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
Defendants-Appellants.
} 9550.

NOTICE OF APPEARANCE.

Notice Is Hereby Given of the appearance of Charles H. Cashin, United States Attorney for the Western District of Wisconsin, and James E. Doyle, Assistant United States Attorney for the Western District of Wisconsin, as attorneys for the above named appellants.

Charles H. Cashin,
United States Attorney, Western District of Wisconsin.

James E. Doyle,
Assistant United States Attorney, Western District of Wisconsin.

Endorsed: Filed Jan. 16, 1948. Kenneth J. Carrick, Clerk.

And afterward, to-wit, on the twentieth day of January, 1948, there was filed in the office of the Clerk of this Court an appearance for the appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 9550.

Rosette Sorge Sayorgnan,
Plaintiff-Appellee,

vs.

The United States of America, *et al.*,
Defendants-Appellants.

The Clerk will enter my appearance as counsel for Appellee.

Carl A. Flom,
119 E. Washington Ave.,
Madison, Wis.

Endorsed: Filed Jan. 20, 1948. Kenneth J. Carrick, Clerk.

And afterward, to-wit, on the ninth day of February, 1948, there was filed in the office of the Clerk of this Court a stipulation to correct the record, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Rosette Sorge Savorgnan, *Plaintiff-Appellee,* *vs.* The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service, *Defendants-Appellants.*	9550.

STIPULATION FOR CORRECTION OF THE RECORD.

It Is Hereby Stipulated and Agreed by and between the parties hereto, by their respective attorneys, that the heading of the "Stipulation as to the Record on Appeal," dated January 15, 1948, which constitutes a part of the record on appeal heretofore certified to this court by the Clerk of the United States District Court for the Western District of Wisconsin, be amended to show as parties defendants, the United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service.

Dated February 5, 1948.

Charles H. Cashin,
United States Attorney, Western District of Wisconsin, Attorney for Defendants-Appellants,
Room 241, Federal Building,
Madison 1, Wisconsin.

Dated February 5, 1948.

Carl Flom,
Attorney for Plaintiff-Appellee,
119 East Washington Avenue,
Madison 3, Wisconsin.

Endorsed: Filed Feb. 9, 1948. Kenneth J. Carrick, Clerk.

And on the same day, to wit, on the ninth day of February, 1948, there was filed in the office of the Clerk of this Court a stipulation for substitution of party defendant-appellant, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

Rosette Sorge Savorgnan,
Plaintiff-Appellee,
vs.
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Ugo Carusi, Commissioner of Immigration and Naturalization Service,
Defendants-Appellants.
} 9550.

STIPULATION FOR SUBSTITUTION OF PARTY DEFENDANT-APPELLANT.

It Is Hereby Stipulated and Agreed by and between the parties hereto, by their respective attorneys, that Watson B. Miller, Commissioner of Immigration and Naturalization, be substituted as a party defendant-appellant for Ugo Carusi, Commissioner of Immigration and Naturalization Service, and that an order for said substitution may be entered forthwith without further notice to either party.

Dated February 5, 1948.

Charles H. Cashin,
United States Attorney, Western District of Wisconsin, Attorney for Defendants-Appellants,
Room 241, Federal Building,
Madison 1, Wisconsin.

Dated February 5, 1948.

Carl Flom,
Attorney for Plaintiff-Appellee,
119 East Washington Avenue,
Madison 3, Wisconsin.

Endorsed: Filed Feb. 9, 1948. Kenneth J. Carrick, Clerk.

And afterward, to-wit, on the fourteenth day of December, 1948, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 9550 October Term and Session, 1948.

Rosette Sorge Savorgnan,
Plaintiff-Appellee,
vs.
The United States of America, Tom C. Clark, The Attorney General for the United States of America, and Watson B. Miller, Commissioner of Immigration and Naturalization Service,
Defendants-Appellants.

Appeal from the District Court of the United States for the Western District of Wisconsin.

December 14, 1948.

Before SPARKS, *Chief Judge*, KERNER, *Circuit Judge*, and SWYGERT, *District Judge*.

SWYGERT, *District Judge*. This is an appeal from a judgment in a declaratory action to determine the plaintiff's present nationality. The question presented is whether, by her acts and conduct and under the applicable statutes, the plaintiff has been expatriated. The District Court held that, since the plaintiff had "merely acquired a technical Italian citizenship", she had never lost or relinquished her American citizenship and that she is now and has been since birth a citizen of the United States. The respondents assert that this is an erroneous determination of the plaintiff's nationality status.

The plaintiff was born in Wisconsin in 1915 and continued to reside in this country until 1941. In the early

part of 1940 she became acquainted with her future husband, Allessandro Savorgnan, who was stationed in St. Louis as a member of the Italian Foreign Service. Several months after meeting Savorgnan, the plaintiff applied through the Italian consulate for citizenship in that country. She did this in order to obtain the consent of the Italian government to her intended marriage to Savorgnan. In August, 1940, the Italian government issued a Royal Decree which granted her an Italian citizenship. Following that, in November, she signed a document bearing an oath of allegiance to Italy and a formal renunciation of her American citizenship. This was done at the Italian consulate in Chicago. The plaintiff and Savorgnan were married on December 26, 1940.

After the diplomatic representatives of the Italian government had been ordered in July, 1941, to leave this country, the plaintiff accompanied her husband to Italy. She sailed July 15, 1941, using an Italian diplomatic passport.

The plaintiff continued to live in Italy throughout the war period. After the American troops entered Rome in June of 1944, she identified herself to the American military authorities and later was employed by the Allied Control Commission. When the American consulate in Rome was reopened in October, 1944, the plaintiff applied for registration as an American citizen. In January, 1945, she was notified by that office that the Department of State had approved her registration. Subsequently, she applied at the American consulate in Rome for a passport. She was told that the passport could not be issued because her registration as an American citizen was being reconsidered by the State Department. On June 1, 1945, the plaintiff was advised that since the State Department was of the opinion that she had become expatriated, a passport would not be issued. Previous to this advice, the plaintiff had learned of the serious illness of her mother. Because of that and after receiving the State Department's decision as to the issuance of a passport, she returned to the United States on November 1, 1945, through use of an Italian diplomatic passport. On February 12, 1946, the plaintiff requested the United States Commissioner of Immigration and Naturalization to correct the records of his office to show that she was an American citizen at the time of her return to this country in 1945. The request was denied, and this action for a declaratory judgment followed.

The District Court made special findings embracing the above facts. The findings also included the following: "The application and oath (for Italian citizenship) were written in Italian. Plaintiff at that time could not read, write or understand that language. She assumed that the signing of the documents was but a step in obtaining consent of the Italian Government to her marriage. * * * At the time she signed the documents she had no intention whatsoever of renouncing her allegiance to this country or establishing a permanent residence in any other country. * * * That plaintiff relied upon her husband's statement and assurance that by signing the documents . . . she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship. * * * At the time she affixed her signature thereto she had no present or fixed intention in her mind of renouncing her allegiance to this country and in fact never did intent to divest herself of American citizenship. * * * That the plaintiff did not knowingly renounce or relinquish her American citizenship."

It is contended on behalf of the respondents that the plaintiff lost her American citizenship under Sections 401 (a) and 403 (a) of the Nationality Act of 1940, Title 8, United States Code §§ 801 (a), 803 (a), by having obtained naturalization as an Italian citizen in 1940 and having taken up a residence in Italy in 1941. In the alternative, it is contended that if these provisions of the Nationality Act of 1940 do not apply, the plaintiff lost her American citizenship under Section 2 of the Act of March 2, 1907, Title 8, United States Code, (1934 Ed.) § 17, either by being naturalized in 1940 in the foreign state of Italy in conformity with its laws or by taking an oath of allegiance to that state on November 23, 1940. It is the plaintiff's view that the Act of March 2, 1907, is the applicable statute, but she says that she did not knowingly or intentionally lose her American nationality or expatriate herself under that statute or under the foregoing sections of the Nationality Act of 1940.

Before deciding whether the plaintiff has become expatriated, it is necessary to determine first which of the two statutes govern the facts in this case. This determination is necessary because the effective date of the Nationality Act of 1940 was January 13, 1941, and pertinent facts occurred both before and after that date. The plaintiff left the United States and went with her husband to

Italy in July of 1941. All of the plaintiff's other acts and conduct relating to a change of nationality occurred prior to January 13, 1941.

It would appear from a reading of the 1907 Act[1] that an American citizen could expatriate himself by either becoming naturalized in or taking an oath of allegiance to a foreign state, regardless of his removal from this country. Nothing in the statute indicates that its effectiveness depended upon whether these acts constituting expatriation occurred outside the United States or, if performed within the country, upon a subsequent change of residence to a foreign state. But the question is presented: Must the statute be read unconditionally or should it be interpreted in the context of certain legal principles which prevailed at the time of its enactment and had governed expatriation in the cases decided prior to that time? The most important of these cases are *Talbot* v. *Jansen*, 3 Dall. (3 U. S.) 133, (1795); *The Santissima Trinidad*, 7 Wheat. (20 U. S.) 283, (1822); and *Comitis* v. *Parkerson*, 56 Fed. 556 (La., 1893). All held that removal from the country, combined with a change in allegiance, was essential in accomplishing expatriation. This doctrine not only expressed the prevailing notions of the day as to what constituted expatriation, but also was a perpetuation of the historical concept of that term.

From the enactment of the 1907 Act until the adoption of the Nationality Act of 1940, the Department of State consistently maintained in its rulings and consular advices that if an American citizen became naturalized in or took an oath of allegiance to a foreign state while within this country, he was not expatriated unless and until he took up residence abroad. 3 Hackworth, *Digest of International Law*, 228-231. No court ever passed directly on this point. However, a dictum in *Ex Parte Griffin*, 237 Fed. 445 (D.C. N.Y., 1916) was to the effect that the forsaking of one's own country was a usual concomitant of expatriation.

On the other hand, the Supreme Court in the case of *Mackenzie* v. *Hare*, 239 U. S. 299 (1915) held that an American woman who married an alien while in the United

1. The Act of March 2, 1907, provides in part:
"Sec. 2. That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

States lost her citizenship under the provisions of Section 3 of the Act of March 2, 1907, even though she continued to live in this country. We take a similar view of Section 2 of the 1907 Act, and hold that a subsequent removal from the country was not necessary to effect the expatriation of a United States citizen who became naturalized in or took an oath of allegiance to a foreign state while residing within the United States. To hold otherwise would impose an unauthorized condition upon the plain and unambiguous provisions of the statute.

Having arrived at this determination, it would seem unnecessary to analyze the Nationality Act of 1940 as it pertains to the facts before us. But assuming, *arguendo*, that the previous administrative interpretation of Section 2 of the 1907 Act were valid, we believe that the provisions of the 1940 Act, as properly construed, cause the facts here to be covered by either one or the other of these statutes.

First, it would appear that the saving clauses of Section 347 of the 1940 Act, Title 8, United States Code § 747, have a direct bearing upon the instant situation. This section provides that nothing in either Chapters III or V of the Act, unless otherwise provided therein, shall be construed to affect "any act, • • • done or existing, at the time this Act shall take effect; but as to all such • • • acts, • • • the statutes • • • repealed by this Act, are hereby continued in force and effect."

Section 2 of the Act of March 2, 1907, was specifically repealed by Section 504, Chapter V, of the 1940 statute. It would appear that becoming naturalized in a foreign state in conformity with its laws is an "act" within the meaning of the above-quoted provisions of Section 347, and that, therefore, the provisions of Section 2 of the 1907 statute would continue to govern the legal consequences of a naturalization in a foreign state which occurred before the effective date of the Nationality Act of 1940, although a change to a foreign residence did not take place until after that date.

Second, Section 401 of the Nationality Act of 1940 provides in part: "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: (a) Obtaining naturalization in a foreign state, . . ." And Section 403 (a) of the Act provides in part: "Except as provided in subsections (g) and (h) of section 401, no national can expatriate himself, or be ex-

patriated, under this section while within the United States. . . ."

These provisions do not say that one must have been naturalized in a foreign state after the Nationality Act of 1940 became effective. We think a reasonable construction permits their application to a factual situation in which an American citizen has been naturalized in a foreign state before the 1940 Act became effective, has continued in that status until and after that time, and then subsequently has taken up residence abroad. The status of becoming a naturalized citizen is the same whether its existence began before or after the enactment of the 1940 Act. This rationale is supported by *Petition of Peterson*, 33 F. Supp. 615 (D.C. Wash., 1940); *Petition of Prack*, 60 F. (2d) 171 (D.C. Pa., 1932); *In re Varat*, 1 F. Supp. 898 (D.C. N. Y., 1932) in which somewhat analogous legal problems were involved. Moreover, it cannot be contended successfully that this renders the statute retroactive, since it is well settled that a statute is not retroactive merely because it depends upon antecedent facts for its operation. *Cox* v. *Hart*, 260 U. S. 427 (1922); *Reynolds* v. *United States*, 292 U. S. 443 (1934); *United States* v. *Bradley*, 83 F. (2d) 483 (C.A. 7th, 1936).

Coming now to the vital question presented by this appeal and having in mind the interpretation we have given the Act of 1907, we think that the voluntary act of the plaintiff in obtaining Italian citizenship in 1940 effected a loss of her American citizenship. While expatriation ordinarily connotes a voluntary renunciation or abandonment of nationality and allegiance, *Perkins* v. *Edg*, 307 U. S. 325 (1939), Congress has said that one shall be deemed to have expatriated himself when he becomes naturalized in a foreign state. In other words, when an American citizen voluntarily acts in a manner inconsistent with his American citizenship by becoming a naturalized citizen of another country, his expatriation results, regardless of his subjective intent.

Applying this construction of the statute to the instant facts, the conclusion is inescapable that the plaintiff, by voluntarily becoming naturalized under Italian law, lost her American citizenship, regardless of whether she knowingly renounced or relinquished that citizenship. Conceding that her motive was solely to obtain consent of the Italian government to her marriage and that she was misinformed as to the legal consequences of her conduct, the

fact remains that she consciously and voluntarily applied for and obtained naturalization in a foreign state which, under the provisions of the statute, effected a loss of her American citizenship,

The motive for her conduct is distinguishable from her intent to act as she did. Such motive has no bearing on the determination of this question. Nor is the fact that she was misinformed or mistaken as to the legal consequences of her conduct of any significance here. One cannot avoid the force of a statute by asserting a mistaken conclusion as to its sanctions or effects. If these factors were permitted consideration, the operation of the statute would depend not upon the voluntarily performed act of becoming naturalized in a foreign state, but upon the extent of the legal knowledge and the subjective intention or motivation of the person involved. Such tests cannot be used to determine the operation of the statute.

Moreover, if (1) removal from the country were a necessary element to effect expatriation under the 1907 Act, or (2) the Nationality Act of 1940 governed the facts of this case, the plaintiff could not find succor in the fact that she did not intend to reside permanently in Italy. It is not disputed that she left this country and went to Italy in order to reside there with her husband. She testified that when she accompanied her husband abroad, her stay there was for an indefinite period of time, although she hoped to return very shortly. We thing that these facts show that the plaintiff took up a foreign residence within the requirement of Section 403 (a) of the Nationality Act of 1940, as well as any requirement of the 1907 Act.

It further appears that the United States of America is not a proper party defendant to this action, since it has not consented to be sued. For that reason the petition should have been dismissed against this defendant.

The judgment is reversed and the case is remanded with directions to dismiss the petition as against the United States and to enter judgment in conformity with this opinion.

And on the same day, to-wit, on the fourteenth day of December, 1948, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Tuesday, December 14, 1948.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Luther M. Swygert, District Judge.

Rosette Sorge Savorgnan, *Plaintiff-Appellee,*		
9550	*vs.*	
The United States of America, Tom C. Clark, the Attorney General for the United States of America, and Watson B. Miller, Commissioner of Immigration and Naturalization Service.		Appeal from the District Court of the United States for the Western District of Wisconsin.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Wisconsin, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed, and that this cause be, and the same is hereby, remanded to the said District Court with directions to dismiss the petition as against the United States and to enter judgment in conformity with the opinion of this Court filed this day.

And afterward, to-wit, on the thirtieth day of December, 1948, there was filed in the office of the Clerk of this Court a petition for rehearing, which said petition is not copied here.

And afterward, to-wit, on the eighth day of January, 1949, the following further proceedings were had and entered of record, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit,

Chicago 10, Illinois.

January 8, 1949

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Luther M. Swygert, District Judge.

Rosette Sorge Savorgnan, *Plaintiff-Appellee,* *vs.* The United States of America, Tom C. Clark, the Attorney General for the United States of America and Watson B. Miller, Commissioner of Immigration and Naturalization Service, *Defendants-Appellants.*	Appeal from the United States District Court for the Western District of Wisconsin.

9550

It is ordered by the Court that the petition for rehearing of this cause be, and the same is hereby denied.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of papers filed and proceedings had (excepting motions and orders relating to briefs of counsel, briefs and the petition for rehearing) in

Cause No. 9550

Rosette Sorge Savorgnan,
Plaintiff-Appellee,

vs.

The United States of America, *et al.*,
Defendants-Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of March, A. D. 1949.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
APR 8 1949

No. 369

IN THE

Supreme Court of the United States

48 Term, 1949

ROSETTE SORGE SAVORGNAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, and WATSON B. MILLER, COMMISSIONER FOR IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

SUEL O. ARNOLD,
Attorney for Petitioner,
Empire Building
Milwaukee 3, Wisconsin

CARL A. FLOM,
Of Counsel,
Madison, Wisconsin

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Schioler v. United States, 75 F. Supp. 353 (1948) 9, 25

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The Santissima Trinidad, 7 Wheat. (20 U. S.) 283 (1795) 23

STATUTES:

The Act of March 2, 1907, Section 2, 34 Stat. 1228; (8 U. S. C. 9, 17 1934 Edition) 4, 6, 8, 9, 17, 22, 25

The Nationality Act of 1940, Oct. 14, 1940, c. 876, Title 1, Subchap. IV, 54 Stat. 1168; 8 U. S. C. A. 801 et seq. 4, 10, 18

TEXTS:

Hackworth, Digest of International Law (1942), Vol. 111, p. 214, 228, 230, 231 ..... 10, 23

MISCELLANEOUS:

Administrative Decisions Under Immigration and Naturalization Laws of the United States (1940-1943):

In the Matter of E———, In Exclusion Proceedings, p. 548 (1943) 9, 24

In the Matter of W———, In Exclusion Proceedings, p. 559 (1943) 23

No.....

IN THE

Supreme Court of the United States

.....Term, 1949

ROSETTE SORGE SAVORGNAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, and WATSON B. MILLER, COMMISSIONER FOR IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Rose Sorge Savorgnan, by her counsel respectfully represents to this Honorable Court:

SUMMARY STATEMENT OF THE MATTER INVOLVED

This is an action brought in the United States District Court for the Western District of Wisconsin for a declaratory judgment under the provisions of Section 503 of the Nationality Act of 1940 establishing the American citizenship of the plaintiff.

The plaintiff was a native born American citizen (T. R. 9) whose parents were likewise native born Americans. (T. R. 12) While employed in St. Louis in 1939 she was introduced to Alessandro Savorgnan (T. R. 13) a diplomatic officer of the Italian Government, (T. R. 9) and in December, 1940, they were married. (T. R. 9)

Prior to her marriage, the plaintiff was informed that because of his status as a diplomatic officer, consent of the Italian Government was necessary before Mr. Savorgnan could marry the plaintiff, and that such consent could not be obtained unless the plaintiff obtained the status of an Italian citizen. (T. R. 13, 14, 16) At the same time, however, as the trial court found, the plaintiff was assured that in acquiring Italian citizenship, she would not lose her American citizenship. (T. R. 10) Upon the assumption that her citizenship would not be affected, the plaintiff made application for Italian citizenship March 28, 1940. (T. R. 16) By Royal Decree, dated August 25, 1940, the plaintiff was grantetd Italian citizenship, (T. R. 17) but the only knowledge which the plaintiff possessed with respect to such grant, consisted in a conversation over the telephone that permission had been given for the marriage. (T. R. 17)

On the 23rd day of November, 1940, the plaintiff signed a document written wholly in Italian purporting to be a renunciation of her American citizenship and an oath of

allegiance to the King of Italy. (T. R. 19-20) At the time the plaintiff signed the document she could neither read, write nor speak the Italian language. (T. R. 21). Furthermore, the trial court found (T. R. 66-67) that there was no formality in connection with the signing; that is, there was no actual taking of an oath, (T. R. 20) and there was no intention on the part of the plaintiff to renounce her allegiance to this country, and that the plaintiff did not intend to divest herself of American citizenship. (T. R. 66-67)

On the 15th day of July, 1941, the plaintiff's husband was compelled by Executive Order of the President of the United States to leave this country practically without notice, and without any opportunity for the plaintiff to obtain an American passport. (T. R. 65) The trial court found that when the plaintiff left this country she had no intention of establishing a permanent residence abroad or of abandoning her residence in the United States. (T. R. 65) Because of the outbreak of the war, the plaintiff was prevented from returning to the United States until 1945. (T. R. 65)

After arrival in this country, the plaintiff made application to the Commissioner of Immigration for a determination that she was an American citizen, and on the 28th of June, 1946, the Acting Commissioner of Immigration advised the plaintiff as follows: (T. R. 1-2)

> "The matter was considered by the Commissioner, and in part he ruled as follows: 'The question is a perplexing one; the answer is not clear. Administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with sureness until passed upon by the courts. Accordingly, the case should be decided against the claimant in the pending

administrative proceedings. She may then seek judicial review if she so chooses.'"

The trial court made exhaustive Findings of Fact and Conclusions of Law, (T. R. 64-67) and entered judgment decreeing that the plaintiff never lost or relinquished her United States citizenship and that she is now and has been since the date of her birth a citizen of the United States. (T. R. 67)

The Court of Appeals reversed the judgment of the trial court and held that the plaintiff lost her citizenship on the following ground by the execution of the document on the 23rd day of November, 1940, and thereby the plaintiff (a) Became naturalized in Italy under Section 2 of the Act of March 2, 1907, 8 U. S. Code, Section 17 (1934 Edition), and, (b) Took an oath of allegiance to Italy.

The Court also held that it was unnecessary under the 1907 Act for the plaintiff to take up a residence in a foreign state in order to become expatriated upon the authority of *Mackenzie vs. Hare*, 239 U. S. 299, which held that the right of citizenship of an American female citizen was suspended through her marriage to an alien. Lastly, it was held that under the 1940 Nationality Act, the plaintiff became expatriated through the establishment of a residence in Italy.

JURISDICTIONAL STATEMENT

It is contended that the Supreme Court has jurisdiction to review the judgment here in question because the Court of Appeals of the Seventh Circuit (a) "has decided an important question of Federal law which has not been but should be settled by this court"; (b) "has decided a Federal question in a way probably in conflict with applicable" decisions of this Court.

QUESTIONS PRESENTED

The following questions are presented:

(a) Shall the plaintiff be deprived of her status as a native born American citizen except upon final judgment by the Supreme Court of the United States.

(b) Is the decision of the Court of Appeals that the plaintiff lost her citizenship while continuing to reside in the United States in conflict with the decision of this Court in *Mackenzie vs. Hare*, 239 U. S. 299.

(c) Did the plaintiff lose her citizenship under the Act of March 2, 1907, by being naturalized in or taking an oath of allegiance to the foreign state of Italy.

(d) Did the plaintiff become expatriated as a United States citizen under the Act of March 2, 1907 or the 1940 Nationality Act without leaving the United States.

(e) Did the plaintiff under the 1940 Nationality Act, become expatriated by taking up a residence abroad.

(f) Is the plaintiff now an American citizen.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1. An important question of Federal law is presented. No right or privilege in the world today is of greater importance than the right of American citizenship. The plaintiff therefore should not be deprived of her status as an American citizen except by final judgment of the Supreme Court of the United States.

2. The plaintiff's rights of citizenship are not to be destroyed by an ambiguity. *Perkins vs. Elg*, 307 U. S. 325. The fact that the trial court and the Court of Appeals have disagreed in their conclusions, indicates the presence of an ambiguity. In refusing to determine that the plaintiff is now an American citizen the Commissioner of Immigration recognized that there was an ambiguity by pointing out that "the question was a perplexing one; the answer is not clear; administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with assurance until passed upon by the Courts." The Commissioner of Immigration correctly stated that the question here presented has not been passed upon by the United States Supreme Court.

3. *Mackenzie vs. Hare*, 239 U. S. 299, held that under Section 3 of the Act of 1907, an American woman assumed the nationality of her husband upon her marriage to an alien, notwithstanding her continued residence in the United States. No question of expatriation was involved. On the contrary the statute was correctly interpreted to permit the resumption of American citizenship upon the cessa-

tion of the marital status subject to the statutry conditions.

4. The Court of Appeals construed the decision in *Mackenzie vs. Hare*, 239 U. S. 299, to impel the conclusion that the plaintiff was permanently expatriated, and therefore deprived of her citizenship under Section 2 of the Act of March 2, 1907, before she left the United States. Section 2 of the Act of March 2, 1907, however applies only to expatriation and not to a mere suspension of the right of citizenship resulting from marriage to an alien. Hence the Court of Appeals has decided a Federal question in conflict with the applicable decision of this Court.

5. The plaintiff did not lose her citizenship under Section 2 of the Act of March 2, 1907. This section provides that expatriation results when an American citizen has been naturalized in a foreign state. The plaintiff could be naturalized in Italy only by being present in that country under the clear language of the statute. *Petition of Prack*, 60 F. (2d) 171.

6. The plaintiff did not take an oath of allegiance to the State of Italy within the meaning of Section 2 of the Act of March 2, 1907, and hence did not become expatriated thereby. The trial court found as a fact that the plaintiff could not read, write or understand the Italian language. (T. R. 65); and that there were no formalities involved at the time the plaintiff signed the document in Italian containing the renunciation of American citizenship and the oath of allegiance to the King of Italy. (T. R. 65) The plaintiff therefore did not take an oath within the meaning of the statute by being sworn and reciting the oath. That such ceremony was required under the Act of March 2,

1907, in order to constitute the taking of an oath clearly appears from the provisions of Section 401(b) of the Nationality Act of 1940, 8 U. S. C. A. Sec. 801, which provides that a citizen may be expatriated: (1) by taking an oath (2) or making an affirmation, (3) or other formal declaration of allegiance to a foreign state. The failure to administer an oath formally has been held not to constitute the taking of an oath under the statute. In the matter of E———— Exclusion Proceedings decided by the Immigration and Naturalization Board in 1943, Volume 1 Page 548 Administrative Decisions under Immigration and Naturalization Laws of the United States (1940-1943) *In re Gogal*, 75 F. Supp. 268, 270, 271 (1947); *Schioler vs. United States*, 75 F. Supp. 353, 355 (1948); *McCampbell vs. McCampbell*, 13 F. Supp. 847, 849 (1936); 30 Op. A. G. 412, 421.

7. The trial court found as a fact that at the time the plaintiff signed the Italian language document containing the renunciation of American citizenship and the oath of allegiance to the King of Italy she relied on the statement and assurance by her husband that she would merely acquire a technical Italian citizenship, which status would not endanger her American citizenship (T. R. 67); that she had no intention of renouncing her allegiance to this country (T. R. 66); and that she never voted at any election in Italy, but did vote in Wisconsin before and after her marriage. (T. R. 67)

8. For many years prior to the enactment of the Nationality Act of 1940, the Act of March 2, 1907 was interpreted as requiring residence in a foreign country in addition to an oath of allegiance in order that expatriation might

result. Letter of Instruction by the Department of State 1933, Hackworth Digest of International Law Volume 3, Pages 228, 230, 231, (1942). The plaintiff did not leave the United States until after the enactment of the 1940 Nationality Act, and therefore could not have taken up a permanent residence outside the United States until after the repeal of the Act of March 2, 1907.

9. Section 403a of the Nationality Act of 1940 (8 U. S. C. A. Section 803a) with certain exceptions not here material, expressly recognizes the rule previously obtaining, by providing that no national may expatriate himself while in the United States, but expatriation shall result if and when the national thereafter takes up a residence abroad. Section 104 of the Nationality Act of 1940 (8 U. S. C. A. Section 504) provides that "the place of general abode shall be deemed the place of residence" for the purposes of Section 403 of the Nationality Act of 1940 (8 U. S. C. A. Sec. 803a) Clearly the plaintiff did not take up a residence abroad. In the first place, the trial court found that the plaintiff left the United States on July 15, 1941, with her husband because of an Executive Order in this country which compelled the departure, and that the plaintiff was given practically no notice and no opportunity to make a planned departure. (T. R. 65) In the second place, the plaintiff did not take up a residence abroad because the plaintiff did not establish a place of general abode in a foreign country. In this respect, the trial court found that when the plaintiff left the United States she had no intention of establishing her permanent residence abroad or abandoning her residence in the United States. The trial court further found that due to the outbreak of the war and its continuation after the plaintiff's arrival in Italy,

she was compelled to remain in that country from July, 1941, until she returned to the United States in 1945, and that her absence from the United States during that period was due entirely to war time conditions. (T. R. 65) It follows therefore, that the plaintiff did not become expatriated by taking up a residence abroad.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case numbered and entitled on its docket No. 9650, Rosette Sorge Savorgnan, Appellee, vs. The United States of America, Tom C. Clark, Commissiosner of Immigration and Naturalization Service, Appellants, to the end that this cause may be reviewed and determined by this court as provided for by the Statutes of the United States; and that the judgment herein of said Court of Appeals be reversed by the Court, and for such further relief as to this court may seem proper.

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CARL A. FLOM,
Of Counsel,
Madison, Wisconsin

No.....

IN THE

Supreme Court of the United States

ROSETTE SORGE SAVORGNAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, and WATSON B. MILLER, COMMISSIONER FOR IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

Brief in Support of Petition for Writ of Certiorari

THE OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported in 171 Federal Reporter (2d) 155. The opinion is also printed in full in the record. (T. R. 86-92)

JURISDICTION

The jurisdiction of this Court is invoked under Section 240a, of the Judicial Code, 28 U. S. C. A. Section 347. The United States Court of Appeals for the Seventh Circuit in this case "decided an important question of federal law which has not been, but should be settled by this court" and "has decided a federal question in a way probably in conflict with applicable decisions of this court." (Supreme Court Rule 38 (5) (b).

Judgment was entered in this case by the United States Court of Appeals for the Seventh Circuit on December 14, 1948. A Petition for Rehearing was denied on January 8, 1949.

STATEMENT OF THE CASE

There are no contraverted issues of fact in this case. The plaintiff was born at Reedsburg, Wisconsin, on May 2, 1915 of native born parents. (T. R. 64) From the date of her birth until July 15, 1941, the plaintiff resided continuously in the United States. (T. R. 64)

In 1939 the plaintiff became acquainted with Allessandro Savorgnan, her future husband, at St. Louis, Missouri. (T. R. 13) On the 26th day of December, 1940, the marriage took place at Waukon, Iowa. (T. R. 9) Savorgnan was employed by the Italian Diplomatic Service, and it was therefore necessary for him to obtain consent of the Italian Government before he could legally be married. (T. R. 41) Consent to such marriage would not be granted unless the prospective bride was an Italian citizen. (T. R. 41)

On March 23, 1940, the plaintiff made application for Italian citizenship. (T. R. 40) By Royal Decree, dated August 25, 1940, the plaintiff was granted Italian citizenship. (T. R. 17, 44)

On the 23rd day of November, 1940, the plaintiff signed a document in the Italian language, which she neither could read, write, speak or understand, (T. R. 65) containing a renunciation of American citizenship and an oath of office to the foreign state of Italy. (T. R. 49) The trial court found upon the undisputed testimony that the plaintiff in signing the document assumed it was a step in obtaining the consent of the Italian Government to the marriage (T. R. 66); that there were no formal proceedings taken in connection with the signing of the document and no oath actually administered (T. R. 63); that at the time she signed the document, the plaintiff had no intention of renouncing her allegiance to the United States (T. R. 66); that the plaintiff did not intend to establish a permanent residence in any other country (T. R. 66-67); that when she signed the document, the plaintiff relied upon her husband's statement and assurance that she would not endanger her American citizenship (T. R. 67); that the plaintiff did not vote in Italy but did vote in the United States both before and after her marriage. (T. R. 67) Lastly, the trial court found that the plaintiff did not knowingly renounce her American citizenship, and that she is now and has been since the date of her birth, a citizen of the United States. (T. R. 67)

SPECIFICATION OF ERRORS

The United States Court of Appeals erred:

1. In holding that the plaintiff became naturalized in the foreign state of Italy.

2. In holding that the plaintiff took an oath of allegiance to the foreign state of Italy.

3. In holding that the plaintiff took up a residence in Italy.

4. In holding that the acts of the plaintiff prior to the enactment of the Nationality Act of 1940 resulted in naturalization in Italy under that Act.

5. In holding that the plaintiff voluntarily relinquished her American citizenship.

6. In holding that the plaintiff is not an American citizen.

ARGUMENT

I.

THE PLAINTIFF DID NOT BECOME EXPATRIATED BY BEING NATURALIZED IN THE FOREIGN STATE OF ITALY.

Despite the finding of the trial court that the plaintiff was not expatriated as an American citizen the Court of Appeals held that the plaintiff was naturalized in the foreign state of Italy. Such finding is wholly unsupported by the record.

1. *Statutes involved.*

The propriety of the finding of the Circuit Court of Appeals depends upon the interpretation of the Act of March 2, 1907 and the Nationality Act of 1940. Section 2 of the Act of March 2, 1907, so far as here material provides: (8 U. S. C. Section 17, 1934 Edition)

> "Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

Section 3 of the Act provides (8 U. S. Code, Section 9, 1934 Edition):

> "A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after March 3, 1931, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens."

Section 401 of the Nationality Act of 1940 (8 U. S. C. A., Section 801) provides in part as follows:

"A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person;

(b) Taking an oath or making an affirmation or other formal declaration to a foreign state; or

(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

(d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(g) Deserting the military or naval service of the United States in time of war, provided he is convicted thereof by a court martial; or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction."

Section 403 of the Nationality Act of 1940 provides:

> "(a) Except as provided in subsections (g) and (h) of section 401. no national can expatriate himself, or be expatriated, under this section while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and when the national thereafter takes up a residence abroad."

Section 347 of the Nationality Act of 1940, Section 747, provides in part that it shall not be construed to:

> "* * * effect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this chapter shall take effect; but as to such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this chapter, are hereby continued in force and effect."

2. *The plaintiff was not naturalized in a foreign state.*

The Court of Appeals held that an American citizen could expatriate himself by becoming naturalized in a foreign state regardless of his removal from this country. (T. A. 89) In arriving at its conclusion, the Court of Appeals disregarded the plain language of the Act of March 2, 1907. Section 2 of the Act provides that an American citizen shall be deemed to have expatriated himself when he "has been naturalized in any foreign state." The language of the statute is clear. A person can

be naturalized in a country only in the event he is physically present in the country. *Petition of Prack*, 60 F. Supp. (2d) 171.

The Court of Appeals interpreted the statute as if it provided for expatriation when an American citizen has been naturalized "by" any foreign state. Had the Congress intended that any such meaning be attributed to the statute, it would have used apt language to that end.

The Court of Appeals also held that the plaintiff became naturalized in a foreign state under the Nationality Act of 1940. Here again the conclusion of the Court of Appeals is fallacious. Section 401 (a) of the Nationality Act provides that a person shall lose his nationality by "obtaining naturalization in a foreign state." It is clear that the 1940 Act, as does its predecessor, clearly provides that expatriation follows naturalization in a foreign state, which of course, requires the presence of the person to be naturalized in the foreign state.

The Government in its brief upon the appeal to the Court of Appeals admitted that the plaintiff "did not, strictly speaking, obtain 'naturalization' as an Italian citizen" subsequent to the effective date of the Nationality Act. Indeed any argument which required an interpretation of the word "in" as meaning anything except physical presence in the country in which naturalization was obtained would render the statute ambiguous. Any ambiguity must be resolved in favor of the plaintiff, because of the principle long established that the rights of citizenship are not to be destroyed by an ambiguity. *Perkins vs. Elg*, 307 U. S. 325.

A specious argument may be advanced by counsel for the Government positioned upon the provisions of Section

403 (a) of the Nationality Act of 1940 to the effect that the status of the plaintiff with respect to naturalization is dependent upon the Nationality Act of 1940 and not upon the previous act and that the various acts referred to in Subsections (a) to (f) inclusive of Section 401 of the Nationality Act of 1940 may result in expatriation, notwithstanding the presence in the United States of the citizens affected, provided residence is subsequently taken up abroad. The infirmity of the argument becomes apparent upon a mere cursory investigation of the provisions of the statute referred to. Expatriation cannot result from the performance within the United States of the acts or the fulfillment of the conditions specified in the statute so far as subdivisions (c), (d) and (e) are concerned. Entering or serving in the armed forces of a foreign state, requires presence of the national in the foreign state. Likewise performance of the duties of any office, post or employment under the Government of a foreign state or political subdivision ordinarily would require presence of the citizen in such foreign state. Similarly, voting in a political election in a foregn state or participating in an election or plebescite to determine the sovereignty of foreign territory would require presence in the foreign state. Lastly there is nothing in Sction 403 (a) of the Statute which in any way qualifies the language in Section 401 (a) providing for loss of nationality by obtaining naturalization "in" a foreign state.

The Circuit Court of Appeals relied upon *Mackenzie vs. Hare*, 239 U. S. 299, to support its conclusion that the plaintiff was expatriated by becoming a citizen of Italy notwithstanding her continued residence in this country. The argument of the Court of Appeals is a complete *non sequitur*. Section 3 of the Act of March 2, 1907, simply

provides that upon her marriage to an alien, an American woman assumes the nationality of her husband for the duration of the marital relationship. Upon the dissolution of the marriage, however, the statute expressly provides that if the American woman is living in the United States, her citizenship is automatically re-assumed, and in the event of residence abroad, she may resume her citizenship by complying with the statutory requirements.

It thus appears too clear for argument that no question of expatriation is involved through the marriage of an American woman to an alien. Her American citizenship is simply suspended during the period of her marriage. She automatically resumes the mantle of American citizenship the moment the marital relation ceases. It is obvious, therefore, that the suspension of American citizenship depends entirely upon the marriage relation and not upon residence. Hence *Mackenzie vs. Hare*, 239 U. S. 299, (1915) has no bearing with respect to the interpretation of Section 2 of the Act of March 2, 1907.

II.

THE PLAINTIFF DID NOT BECOME EXPATRIATED BY TAKING AN OATH OF ALLEGIANCE TO A FOREIGN STATE.

Section 2 of the Act of March 2, 1907, provides that an American citizen may become expatriated when he has taken an oath of allegiance to any foreign state. Upon the assumption *arguendo* that the plaintiff took an oath of allegiance, she nevertheless did not become expatriated under the Act of March 2, 1907. Despite the fact that there was

no specific provision in the 1907 Act which required a foreign residence coupled with an oath of allegiance to accomplish expatriation, no American was ever held to be deprived of his American citizenship unless he took up a residence abroad. In the Matter of W———— (1943) Administrative Decisions under Immigration & Nationality Laws of the United States, Vol. 1, page 559, 560 (1940-1943). *Talbot v. Jansen*, 3 Dall. (3 U. S.) 133, (1795); *The Santissima Trinidad*, 7 Wheat. (20 U. S.) 283, (1822); *Comitis v. Parkerson*, 56 Fed. 556, (La. 1893); 3 Hackworth, *Digest of International Law*, 228-231; *Ex Parte Griffin*, 237 Fed. 445 (D. C. N. Y. 1916)

The previous decisions with respect to change of residence were incorporated in the Nationality Act of 1940, Section 403 (a), which expressly provides that no American can expatriate himself simply by taking an oath of allegiance, as provided in Section 401 (b) of the Act, unless he thereafter takes up a residence abroad.

Section 104 of the Nationality Act of 1940 provides that for the purpose of Section 403, the term place of residence shall be defined as follows:

> "For the purposes of section * * * 403 * * * of this chapter the place of general abode shall be deemed the place of residence."

The record conclusively establishes the fact that the plaintiff never established a place of general abode or a residence in Italy. The trial court found that the plaintiff and her husband left the United States solely by reason of an Executive order of the President of the United States, that neither the husband nor the plaintiff were given an opportunity to make the necessary arrangements for leav-

ing, and that the plaintiff was not given an opportunity to obtain an American passport. (T. R. 65) The trial court further found that when the plaintiff left this country she had no intention of establishing a permanent residence abroad or of abanding her residence in the United States. (T. R. 65) While it is true that the plaintiff remained out of this country until 1945, the trial court found that such continued residence abroad was caused entirely by the war. (T. R. 65)

The argument thus far has proceeded upon the hypothesis that an oath of allegiance was in fact taken by the plaintiff. The trial court found as a fact that the plaintiff merely signed a statement containing an oath; that there was no ceremony in connection with the signature and that the plaintiff did not in fact take an oath of allegiance to Italy (T. R. 66-67) This finding was based upon the undisputed fact that the document was in the Italian language, which the plaintiff could not read, write or understand (T. R. 65) and upon the further fact that the plaintiff was assured by her fiance that the signing of the document would merely result in a technical Italian citizenship, which status would in no way endanger her American citizenship. (T. R. 67) Finally the trial court held that at the time the document was signed, the plaintiff had no intention of renouncing her allegiance to the United States. (T. R. 66)

The failure formally to administer an oath has been uniformly held not to constitute the taking of an oath within the meaning of the Nationality Statute. In the matter of E———— Exclusion Proceedings decided by the Immigration and Naturalization Board in 1943, Volume 1, Page 548 Administrative Decisions under Immigration and Naturalization Laws of the United States (1940-1943); *In*

re Gogal, 75 F. Supp. 268, 270, 271 (1947); *Schioler vs. United States*, 75 F. Supp. 353, 355 (48); *McCampbell vs. McCampbell*, 13 F. Supp. 847, 849 (1936); 30 Op. A. G. 412, 421.

It should be borne in mind that the status of the plaintiff was fixed under the Act of March 2, 1907. The document containing the oath of allegiance was signed by the plaintiff on November 23, 1940. (T. R. 65) The Nationality Act of 1940 did not go into effect until January, 1941. The saving clause of the Nationality Act of 1940, Section 347 (8 U. S. C. A. Section 747) which has already been partially quoted, provides that the 1940 Act shall not effect any act, thing or matter, done or existing at the time the Act took effect. It is apparent therefore, that the effect of the signing of the oath must be measured by the Act of March 2, 1907, and not by the Nationality Act of 1940.

In respect of the oath of allegiance, the Nationality Act of 1940 has a much broader scope than the corresponding act of March 2, 1907. Section 2 of the latter act provides that an American citizen shall be deemed to have expatriated himself when he has taken an oath of allegiance to any foreign state. Section 401 (b) of the Nationality Act of 1940 provides that a citizen of the United States shall lose his nationality by taking an oath, or making an affirmation, or other formal declaration of allegiance to a foreign state. In view of the difference in language between the two statutes, the point need not be labored that the plaintiff did not take an oath of allegiance within the meaning of Section 2 of the Act of March 2, 1907.

III.

THE PLAINTIFF DID NOT BECOME EXPATRIATED BECAUSE SHE DID NOT VOLUNTARILY ABANDON HER CITIZENSHIP.

The Court of Appeals concluded that the plaintiff lost her American citizenship by becoming voluntarily naturalized under the Italian Law. (T. R. 91) The conclusion of the Court was based upon the premise that the plaintiff obtained Italian citizenship in 1940 while she was still a resident of this country. (T. R. 91) The Court recognized the rule that ordinarily expatriation connotes a voluntary renunciation or abandonment of nationality and allegiance as established in *Perkins vs. Elg*, 307 U. S. 325.

The trial court found that the plaintiff did not intend to divest herself of American citizenship (T. R. 65) and that she had no intention of renouncing her allegiance to this country (T. R. 66); that after her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States (T. R. 67); that she never voted at any election in Italy, but did vote in Wisconsin, both before and after her marriage (T. R. 67) and that the plaintiff did not in fact knowingly renounce or relinquish her American citizenship. (T. R. 67)

Because of the fact that the plaintiff was not naturalized in Italy, the major premise of the argument of the Court of Appeals is fallacious and upon recognized principles of logic the conclusion is likewise fallacious.

CONCLUSION

In conclusion, we submit that the plaintiff should not be shorn of her citizenship upon the basis of a decision of the Court of Appeals overruling a decision in her favor by the trial court, but that the United States Supreme Court should assume jurisdiction to the end that the final judgment in this case be rendered by the Court of last resort. It is further submitted that in resting its decision upon *Mackenzie vs. Hare*, 239 U. S. 299, the Court of Appeals decided the case at bar in a way probably in conflict with the applicable decision of this Court. Finally it is submitted that a prima facie showing has been made that the decision of the trial court adjudging the plaintiff to be an American citizen was correct, and that the Court of Appeals erred in vacating and setting aside that judgment and holding that the plaintiff voluntarily relinquished her American citizenship.

Respectfully submitted,

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No. 48

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

ROSETTE SORGE SAVORGNAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, J. HOWARD McGRATH, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA,, and WATSON B. MILLER, COMMISSIONER OF IMMIGRATION and NATURALIZATION SERVICE,

Respondents,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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5. Subsequent to the enactment of the Act of 1907 the statute was interpreted by the Secretary of State as requiring a foreign residence in order to acquire citizenship. 3 Hackworth, *Digest of International Law*, 228-231.

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7. The right of citizenship is not to be destroyed by an ambiguity. *Perkins v. Elg*, 307 U. S. 325 (1939).

8. *Mackenzie v. Hare*, 239 U. S. 299 (1915), which held that marriage of an American woman to a foreigner resulted in adoption by the wife of husband's nationality, without removal from this country, was predicated upon the ancient principle that the wife's citizenship became merged with that of her husband.

9. The Nationality Act of 1940, subject to exceptions which are not here material, expressly requires removal to a foreign country in order to effect expatriation.

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4. Citizenship is not lost except voluntarily.
5. *Mackenzie v. Hare*, 239 U. S. 299 (1939), does not establish a contrary doctrine.
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Respondents,

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Brief for Petitioner

OPINIONS BELOW

The opinion of the Court of Appeals (R. 86-92) is reported at 171 F. 2d 155. The opinion of the District Court (R. 61-67) is reported at 73 F. Supp. 109.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254. The United States Court of Appeals for the Seventh Circuit in this case "decided an important question of federal law which has not been, but should be settled by this court" and "has decided a federal question in a way probably in conflict with applicable decisions of this court." (Supreme Court Rule 38 (5) (b).)

STATEMENT OF THE CASE

This is an action brought in the United States District Court for the Western District of Wisconsin for a declaratory judgment under the provisions of Section 503 of the Nationality Act of 1940 (U. S. C. Section 903) establishing the American citizenship of the plaintiff. The trial court entered judgment in favor of the petitioner which was reversed by the Court of Appeals.

The grant of the writ of certiorari by this Court presents two questions: (1) Did the petitioner lose her citizenship under the Act of March 2, 1907, or the Nationality Act of 1940, (a) By becoming naturalized in the foreign state of Italy; (b) By taking an oath of allegiance to the state of Italy; (c) By taking up a residence abroad; and (2) Did the plaintiff voluntarily become expatriated? These questions were answered in the affirmative by the Court of Appeals.

The petitioner was born in Reedsburg, Wisconsin on May [illegible] 1915 of native born parents (R. 64). From the date of her birth until July 15, 1941, the petitioner resided continuously in the United States (R. 64).

While she was employed in St. Louis in 1939, the petitioner became acquainted with Alessandro Savorgnan (R. 13), a diplomatic officer of the Italian Government (R. 9) to whom she was married in December, 1940.

Because of his employment with the diplomatic service, it was necessary for Savorgnan to obtain the consent of the Italian Government to marry the petitioner (R. 41). Such consent would not have been granted unless the prospective bride became an Italian citizen (R. 13, 14, 16, 41). Upon the assurance of her future husband that in acquiring Italian citizenship she would not lose her American citizenship (R. 10, 67), the petitioner on March 28, 1940, made application for Italian citizenship (R. 16, 61). By Royal Decree, dated August 25, 1940, the petitioner was granted Italian citizenship (R. 17) conditioned upon the petitioner taking an oath of allegiance (R. 44). The petitioner had no knowledge of such decree; she was simply advised over the telephone that permission had been granted for the marriage (R. 17).

On the 23rd day of November, 1940, at the request of her future husband, the petitioner signed a document in the Italian language which the petitioner could neither read, write, nor understand, containing a statement renouncing American citizenship, and an oath of allegiance to Italy (R. 19-20, 65). There was in fact no oath of allegiance administered to or taken by the petitioner; she simply signed the oath without any formalities (R. 19-20, 65-66).

On the 15th day of July, 1941, the petitioner's husband was compelled by Executive Order of the President of the United States to leave this country practically without notice, and without any opportunity for the petitioner to obtain an American passport (R. 65).

After arrival in this country, the plaintiff made application to the Commissioner of Immigration for a determination that she was an American citizen, and on the 28th of June, 1946, the Acting Commissioner of Immigration advised the plaintiff as follows (R. 1-2):

> "The matter was considered by the Commissioner, and in part he ruled as follows: 'The question is a perplexing one; the answer is not clear. Administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with sureness until passed upon by the courts. Accordingly, the case should be decided against the claimant in the pending administrative proceedings. She may then seek judicial review if she so chooses.' "

The trial court found that the petitioner in signing the document containing the oath of allegiance assumed it was a step in obtaining the consent of the Italian Government to the marriage (R. 66); that there were no formal proceedings taken in connection with the signing of the document and that no oath was actually administered (R. 63); that at the time she signed the document, the petitioner had no intention of renouncing her allegiance to the United States (R. 66); that when she signed the document, the petitioner relied upon her husband's statement and assurance that she would not endanger her American citizenship (R. 67); that when the petitioner left this country she had no intention of establishing a permanent residence abroad or of abandoning her residence in the United States (R. 65); that because of the outbreak of the war, the petitioner was prevented from returning to the United States until 1945 (R. 65); that the petitioner did not vote in Italy but did vote

in the United States both before and after her marriage (R. 67). Lastly, the trial court found that the plaintiff did not knowingly renounce her American citizenship, and that she is now and has been since the date of her birth, a citizen of the United States (R. 67).

The trial court thereupon entered judgment decreeing that the petitioner had never lost or relinquished her United States citizenship, and that she is now and has been since the date of her birth, a citizen of the United States (R. 67). The Court of Appeals reversed the judgment of the trial court and held that the plaintiff lost her citizenship (a) by becoming naturalized in Italy under Section 2 of the Act of March 2, 1907, and by taking an oath of allegiance to Italy (R. 91).

The Court of Appeals further held upon the authority of *Mackenzie v. Hare*, 239 U. S. 299, that it was unnecessary under the 1907 Act, for the plaintiff to give up a residence in a foreign state in order to become expatriated (R. 89-90). Finally, the Court of Appeals held that if removal from this country was necessary to effect expatriation either under the Act of 1907 or the Nationality Act of 1940, the plaintiff became expatriated through the establishment of a residence in Italy (R. 92).

SPECIFICATION OF ERRORS

The Court of Appeals erred:

1. In holding that the petitioner became naturalized in the foreign state of Italy.

2. In holding that the petitioner took an oath of allegiance to the foreign state of Italy.

3. In holding that the petitioner took up a residence in Italy.

4. In holding that the acts of the petitioner prior to the enactment of the Nationality Act of 1940 resulted in naturalization in Italy under that Act.

5. In holding that petitioner voluntarily relinquished her American citizenship.

6. In holding that petitioner is not an American citizen.

SUMMARY OF ARGUMENT

I. THE PETITIONER WAS NOT NATURALIZED IN THE FOREIGN STATE OF ITALY.

1. The Court of Appeals held that the petitioner was naturalized in the foreign state of Italy.

2. Section 2 of the Act of 1907 provides for expatriation by naturalization "in" a foreign state.

3. The Court of Appeals interpreted the act to mean that naturalization "by" a foreign state was equivalent to naturalization in such foreign state.

4. Before the enactment of Section 2 of the Act of 1907, the authorities held that citizenship in a foreign state was not acquired except by removal to such country.

Talbot v. Jansen, 3 Dall. (3 U. S. 133) (1795)

The Santissima Trinidad, 7 Wheat. (20 U. S. 283) (1822)

Comitis v. Parkerson, 56 F. 556 (La. 1893)

5. Subsequent to the enactment of the Act of 1907 the statute was interpreted by the Secretary of State as requiring a foreign residence in order to acquire citizenship. 3 Hackworth *Digest of International Law*, 228-231.

6. *United States v. Karnuth*, 19 F. Supp. 581-582 (D. C. N. Y.) held that the Act of 1907 was merely declaratory of pre-existing law.

7. The right of citizenship is not to be destroyed by an ambiguity. *Perkins v. Elg*, 307 U. S. 325, 337.

8. *Mackenzie v. Hare*, 239 U. S. 299, which held that marriage of an American woman to a foreigner resulted in adoption by the wife of husband's nationality without removal from this country, was predicated upon the ancient principle that the wife's citizenship became merged with that of her husband.

9. The Nationality Act of 1940, subject to exceptions which are not here material, expressly requires removal to a foreign country in order to effect expatriation.

10. The petitioner was not naturalized in the foreign state of Italy.

II. THE PETITIONER DID NOT TAKE AN OATH OF ALLEGIANCE TO A FOREIGN STATE.

1. The trial court found that the petitioner merely signed an oath of allegiance without any formality which did not amount to the taking of an oath of allegiance.

2. The Court of Appeals did not determine whether the petitioner took an oath of allegiance except through the implication in its decision that the plaintiff became naturalized in a foreign state.

3. Expatriation does not result under the statute unless the petitioner actually swore to the oath of allegiance.

In the Matter of E——, In Exclusion Proceedings, decided by the Board of Immigration Appeals in 1943, Vol. 1, p. 548, Administrative Decisions Under Immigration and Naturalization Laws of the United States (1940-1943) and *In re Gogal*, 75 F. Supp. 268 (1947).

4. The effect of the signing of the document containing the oath of allegiance to Italy must be measured by the Act of 1907 and not by the Nationality Act of 1940.

5. The 1940 Nationality Act with respect to a declaration of allegiance to a foreign state is broader than the Act of 1907.

III. THE PETITIONER DID NOT TAKE UP A RESIDENCE ABROAD.

1. The trial court found that the petitioner did not establish a permanent residence abroad or abandon her residence in the United States.

2. The Court of Appeals reached an opposite conclusion.

3. The Nationality Act of 1940 requires residence abroad in order to accomplish expatriation.

4. The plaintiff did not establish a residence abroad within the meaning of the Nationality Act of 1940.

Anderson v. Watt, 138 U. S. 694

District of Columbia v. Murphy, 314 U. S. 441, 455

Sun Printing & Publishing Association v. Edwards, 194 U. S. 377, 383

Gilbert v. David, 235 U. S. 561, 569

Mitchell v. United States, 21 Wall. 350-353

5. The petitioner's status is dependent upon the Act of 1907.

6. Under the Act of 1907, expatriation did not follow unless a permanent residence was established outside the United States. 3 Hackworth *Digest of International Law* 231; *The Santissima Trinidad*, 7 Wheat. 283, 348; *Comitis v. Parkerson*, 56 F. 556, 560 (C. C. La.).

7. The conclusion of the Court of Appeals that the petitioner took up a residence in Italy is not supported by the evidence and should be set aside.

IV. THE PETITIONER DID NOT VOLUNTARILY ABANDON HER AMERICAN CITIZENSHIP.

1. The trial court found that the petitioner did not voluntarily abandon her American citizenship.

2. The Court of Appeals held that the intention of the petitioner was not controlling and that the question was whether she intended to act as she did.

3. The failure of the trial court to give effect to the petitioner's intention is contrary to *Knauer v. U. S.*, 328 U. S. 654 (1946) and *Perkins v. Elg*, 307 U. S. 325.

4. Citizenship is not lost except voluntarily. *Dos Reis ex rel. Camara v. Nicolls*, 68 F. Supp. 773 D. C. (Mass.) 161 F. 2nd 860, C. C. A. 1. *In Re Gogal*, 75 F. Supp. 268, 271 D. C. (Penn.); *Schioler v. U. S.*, 75 F. Supp. 353, 355, D. C. (Ill.);

5. *Mackenzie v. Hare*, 239 U. S. 299, does not establish a contrary doctrine.

6. The uncertainty of the law referred to by the Commissioner of Immigration in holding that the petitioner was not an American citizen must be resolved in favor of the petitioner.

CONCLUSION.

ARGUMENT

I.

THE PETITIONER WAS NOT NATURALIZED IN THE FOREIGN STATE OF ITALY.

The Circuit Court of Appeals held that the petitioner was naturalized in the foreign state of Italy prior to the 13th day of January, 1941, which was the effective date of the Nationality Act of 1940 (R. 91). The decision of the Court of Appeals was bottomed upon the premise that the petitioner was naturalized in the foreign state of Italy under the provisions of the Act of 1907 before the Nationality Act of 1940 became effective (R. 91). The Court of Appeals concluded further that the status of the petitioner was the same whether its existence began before or after the enactment of the 1940 act (R. 91). Finally the Court of Appeals held that if removal from the United States was necessary in order to effect expatriation under either the Act of 1907 or the 1940 Nationality Act, the petitioner satisfied such conditions by taking up a foreign residence (R. 92).

The Court of Appeals in its decision ignored the plain language of the Act of 1907. Section 2 of the Act provides that an American citizen shall be deemed to have expatriated himself when he has been naturalized "in" any foreign state. Since the acts upon which the Court of Appeals relied to result in the naturalization in a foreign state,—applying for naturalization in and signing an oath of allegiance to the foreign state of Italy—occurred in the United States, the question is presented as to whether naturalization in a foreign state was accomplished.

The statute in express language requires the naturalization to take place "in" the foreign state. *Petition of Prack*, 60 F. 2d 171, (D. C. Penn.). The Court of Appeals, however, interpreted the statute as though it provided for expatriation when an American citizen had been naturalized "by" any foreign state. Had the Congress intended that any such meaning be attributed to the statute, it would have used apt language to that end.

Prior to the Act of 1907, the authorities uniformly held that citizenship in a foreign state was not acquired unless the American citizen established a permanent residence in the country in which citizenship was secured. *Talbot v. Jansen*, 3 Dall. (3 U. S.) 133, (1795); *The Santissima Trinidad*, 7 Wheat. (20 U. S. 283) (1822); *Comitis v. Parkerson*, 56 F. 556 (La. 1893).

After referring to the foregoing decisions the Court of Appeals said (R. 89):

> "All held that removal from the country, combined with a change in allegiance, was essential in accomplishing expatriation. This doctrine not only expressed the prevailing notions of the day as to what constituted expatriation, but also was a perpetuation of the historical concept of that term."

Subsequent to the enactment of the Act of March 2, 1907, the Department of State interpreted the Act as requiring permanent residence abroad in order to accomplish expatriation. On this point, the Court of Appeals in its decision said (R. 89):

> "From the enactment of the 1907 Act until the adoption of the Nationality Act of 1940, the Department of State consistently maintained in its rulings and consular advices that if an American citizen became nat-

uralized in or took an oath of allegiance to a foreign state while within this country, he was not expatriated unless and until he took up residence abroad. 3 Hackworth, *Digest of International Law*, 228-231. No court ever passed directly on this point. However, a dictum in *Ex Parte Griffin*, 237 Fed. 445 (D. C. N. Y.) (1916) was to the effect that the foresaking of one's own country was a usual concomitant of expatriation."

In a letter of instruction by the Department of State in 1933, the Department of State in holding that an American did not lose his citizenship through an oath of allegiance taken in the United States said: (3 Hackworth, *Digest of International Law*, 228-231)

"It is true that the first paragraph of Section 2 of the Act of March 2, 1907, which provides 'that any American citizen shall be deemed to have expatriated himself * * * when he has taken an oath of allegiance to any foreign state' does not contain a limitation upon the right of an American citizen to expatriate himself while continuing to reside in the United States. The construction which the Department has placed upon this law seems to be reasonable and carries out the long continued policy of the Department not to recognize any act of renunciation of American citizenship as resulting in expatriation, *unless accompanied by actual removal* from the country. The word 'expatriate' itself connotes by derivation the idea of leaving the country."

The ruling of the State Department recognized that the Act of March 2, 1907, like the Act of July 27, 1868, was merely declaratory of the law as it had existed prior to its enactment. *United States v. Karnuth*, 19 F. Supp. 581-582 (D. C. N. Y.).

In the teeth of the unbroken line of authority holding that citizenship in a foreign country was not acquired except by residence in such country and despite the monition of this Court in *Perkins v. Elg*, 307 U. S. 325, 337, that the right of citizenship is not to be destroyed by an ambiguity, the Circuit Court of Appeals upon the authority of *Mackenzie v. Hare*, 239 U. S. 299, held that the plaintiff had been naturalized in a foreign state (R. 89-90).

Section 3 of the Act of March 2, 1907, which was involved in *Mackenzie v. Hare*, 239 U. S. 299, provided that any American woman who married a foreigner "shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship by continuing to reside in the United States if she was residing in the United States at the time of such termination."

The Statute with respect to loss of citizenship by an American woman was clear and unambiguous and not open to construction. In accordance with the mandate of Congress and upon the existence of the marriage relation, the Statute became operative. It is important to note, however, that the Statute did not provide for permanent expatriation. Citizenship was restored automatically upon the termination of the marriage relation. Consequently the effect of the Statute was merely to suspend the right of citizenship, not to destroy it. If the wife continued to reside in this country, it was unnecessary for her to do anything more than to continue such residence upon the termination of the marriage relation in order to restore her citizenship. This provision in the Statute required the Court to interpret the Statute literally and prevented the court from engrafting a limitation upon the Statute which would preclude its operation in cases where the wife continued to reside in this country after her marriage.

The argument of the Court of Appeals in concluding that *Mackenzie v. Hare*, 239 U. S. 299, established the principle that subsequent removal from this country was not necessary to effect the expatriation of the United States citizen who took an oath of allegiance to a foreign state (R. 89-90) is a complete *non sequitur*. The Department of State in 3 Hackworth, *Digest of International Law*, 228-231 correctly defined the ambit of the decision in *Mackenzie v. Hare*, 239 U. S. 299, when it said:

> "'It might be contended that the decision of the Supreme Court of the United States, December 6, 1915, in the case of *Mackenzie v. Hare*, 239 U. S. 299, to the effect that an American woman who married an alien in the United States and continued to reside in this country lost her American citizenship, under the provision on Section 3 of the Act of March 2, 1907, is contrary to the views expressed above, and should be regarded as having overruled decisions of the courts to the effect that expatriation requires a removal from the United States. Such, however, is not believed to be the case, since the court took care to differentiate loss of citizenship by a woman through marriage to an alien from other cases of expatriation, and held that the provision of the statute in question merely served to confirm a rule generally recognized by states concerning 'the identity of husband and wife,' which was regarded as an 'ancient principle of our jurisprudence.' The court held in effect that the woman's citizenship became, under the provision of the statute, merged in that of her husband, regardless of their residence. Thus the case was essentially different from that of an individual who, while remaining in the United States, attempts to subject himself to the sovereignty of a foreign state, through the taking of an oath of allegiance thereto."

The requirement that naturalization in order to accomplish expatriation must take place "in" a foreign country and that the taking of an oath of allegiance does not result in expatriation unless residence is subsequently taken up abroad has been carried over into the Nationality Act of 1940. Section 403 of the Nationality Act of 1940, provides that except as provided in Subsections (g) and (h) of Section 401 (deserting the military or naval service of the United States or its outlying possessions, and that expatriation results from the performance of the acts only when the national thereafter takes up a residence abroad. If therefore the status of the petitioner became fixed under the Nationality Act of 1940, which we deny, the petitioner would not, nevertheless, have lost her citizenship unless she took up her residence abroad.

We therefore respectfully submit that the petitioner did not become naturalized "in" the foreign State of Italy either by virtue of her application for such citizenship or by virtue of an oath of allegiance to the State of Italy.

II.

THE PETITIONER DID NOT TAKE AN OATH OF ALLEGIANCE TO A FOREIGN STATE.

The argument has thus far proceeded upon the hypothesis that an oath of allegiance was in fact taken by the petitioner. The trial court found as a fact that the petitioner merely signed a statement containing an oath; that there was no ceremony in connection with the signature and that the petitioner did not in fact take an oath of allegiance to Italy (R. 66-67). This finding was based upon the un-

disputed fact that the document was in the Italian language, which petitioner could not read, write or understand (R. 65) and upon the further fact that petitioner was assured by her fiance that the signing of the document would merely result in a technical Italian citizenship, which status would in no way endanger her American citizenship (R. 67). Finally the trial court held that at the time the document was signed, petitioner had no intention of renouncing her allegiance to the United States (R. 66).

The Circuit Court of Appeals did not determine whether the petitioner took an oath of allegiance to the foreign state of Italy. In reciting the facts the Court of Appeals stated that the petitioner signed a document bearing an oath of allegiance to Italy (R. 87). The finding of the trial court that the oath for Italian citizenship was written in Italian is also referred to in the opinion of the Court of Appeals (R. 88). The Court of Appeals holds that under the 1907 Act, an American citizen could expatriate himself by becoming naturalized in or taking an oath of allegiance to a foreign state regardless of his removal from this country, but the Court of Appeals does not determine that the plaintiff took an oath of allegiance unless the finding "that the voluntary act of the plaintiff in obtaining Italian citizenship in 1940, effected a loss of her American citizenship" (R. 91) admits of such a finding. At all events the Court of Appeals refrained from analyzing the facts or referring to the decisions bearing upon the effect of the plaintiff's signature following the oath, or the fact that the petitioner did not in fact take an oath of allegiance to the foreign state of Italy.

The failure formally to administer an oath has been held not to constitute the taking of an oath within the mean-

ing of the Nationality Act. *In the Matter of E——, In Exclusion Proceedings*, decided by the Board of Immigration Appeals in 1943, Vol. 1, p. 548, Administrative Decisions Under Immigration and Naturalization Laws of the United States (1940-1943). The facts in such proceedings were as follows: E—— was born in Montana and when an infant was taken by his father to Canada where his father became a naturalized citizen. E—— later applied for enlistment in Canada and executed an oath of allegiance in 1939 but which was not attested to by an officer. E—— subsequently applied for admission to the United States as an American citizen. Notwithstanding the fact that his name was signed to the oath, he testified that he did not take an oath of allegiance at that time. The Board considered the Act of March 2, 1907, as the applicable statute in effect when he attempted to join the militia. In holding that there was insufficient supporting evidence of the intention of E—— to take the oath the Board of Immigration Appeals held:

> "This statute (the Canadian Act requiring the oath) requires two things be done, that the oath be taken and it be subscribed to. The appellant did subscribe to the form of oath, but there is nothing on record to indicate that he took the oath. To constitute a valid 'oath,' there must be in the presence of the person authorized to administer it, *an unequivocal act whereby the affiant consciously takes upon himself the obligation of an oath.* * * * We feel that the act of the appellant in *signing* the form of oath is not taking an oath within the meaning of Section 2 of the Act of March 2, 1907." *State v. Privitt* (1931) 327 Mo. 1194; *Weddock v. State* (1930) 118 Texas Cr. R. 537. (Italics supplied.)

The recent case of *In re Gogal*, 75 F. Supp. 268, (1947) considered the matter of an American born citizen taking an oath of allegiance in a foreign army. Petitioner in that case sought to establish his American citizenship on the ground that he did not knowingly and voluntarily take the oath. In finding for the petitioner, the court stated (page 270-271):

> "It is impossible for any person to swear before their God, or affirm, that certain things will be done or not done without knowing or hearing that to which the oath is being taken. * * * this oath at the most creates a presumption of expatriation on the part of the petitioner by service is in the armed forces of Czechoslovakia. However, the presumption may be rebutted and under the facts in the instant case I believe that the petitioner has met that burden of proof."

It should be borne in mind that the status of the petitioner was fixed under the Act of March 2, 1907. The document containing the oath of allegiance was signed by the petitioner on November 23, 1940 (R. 65). The Nationality Act of 1940 did not go into effect until January 13, 1941. The saving clause of the Nationality Act of 1940 provides that the 1940 Act shall not affect any act, thing or matter, done or existing at the time the Act took effect. It is apparent therefore, that the effect of the signing of the oath must be measured by the Act of March 2, 1907, and not by the Nationality Act of 1940.

In respect of the oath of allegiance, the Nationality Act of 1940 has a broader scope than the corresponding Act of March 2, 1907. Section 2 of that Act provides that an American citizen shall be deemed to have expatriated himself when he has taken an oath of allegiance to any foreign

state. Section 401 (b) of the Nationality Act of 1940 provides that a citizen of the United States shall lose his nationality "by taking an oath or making an affirmation, or other formal declaration of allegiance to a foreign state."

Under the law as it now stands, expatriation may be accomplished not only by taking an oath of allegiance but also by making an affirmation or other formal declaration of allegiance to a foreign state. The statute is not clear as to what will constitute "other formal declaration" but it is important to observe that the declaration must be formal. The broadened scope of Section 401 (b) of the Nationality Act of 1940 points to the conclusion that the mere signing of a statement containing an oath without any formality does not constitute the taking of the oath of allegiance to a foreign state within the purview of the Act of March 2, 1907.

III.

PETITIONER DID NOT TAKE UP A RESIDENCE ABROAD.

The trial court found that on July 15, 1941, the petitioner and her husband were compelled by executive order to leave this country, practically without notice and without any opportunity for any planned or considered departure (R. 65). The trial court further found that when the plaintiff left this country for Italy, she did so without any intention of establishing a permanent residence abroad, or abandoning her residence in the United States (R. 65).

The Court of Appeals rejected the findings of the trial court and held that the plaintiff took up a foreign residence

within the meaning of Section 403 (a) of the Nationality Act of 1940 and the 1907 Act.

Section 403 (a) of the Nationality Act of 1940 provides that no national may expatriate himself while in the United States, but that expatriation shall result "if and when the national thereafter takes up a residence abroad." Section 104 of the Nationality Act of 1940 provides that for the purpose of Section 403 "the place of general abode shall be deemed the place of residence."

The definition of the phrase "place of residence" is cast in the form of a definition of domicile. Funk & Wagnalls New Standard Dictionary defines "domicile" as a "place of abode." Undoubtedly the motivating force in using the word "residence" in Section 403 of the Nationality Act of 1940 was to avoid the complexities which might arise with respect to married women and to permit her to establish her own separate residence. Ordinarily the domicile of a married woman is that of her husband. *Anderson v. Watt*, 138 U. S. 694.

In determining the domicile or residence, it will be presumed that the domicile or residence once established continues until facts have been adduced to establish the contrary. *District of Columbia v. Murphy*, 314 U. S. 441, 455; *Anderson v. Watt*, 138 U. S. 694.

In establishing a legal domicile two factors are indispensable, first, residence in the new domicile, and second, the intention permanently to remain there. *Sun Printing & Publishing Association v. Edwards*, 194 U. S. 377, 383; *Gilbert v. David*, 235 U. S. 561, 569; *Mitchell v. United States*, 21 Wall. 350-353.

It thus appears clear that the Court of Appeals was in error in holding that under the Nationality Act of 1940, the petitioner had established a place of abode in Italy.

As we have previously pointed out the petitioner's status is dependent upon the Act of 1907. Hence it is not necessary for the Court to determine whether the petitioner established a place of abode under the Nationality Act of 1940.

Under the 1907 Act, the State Department in holding that expatriation could not result unless a permanent residence was established outside the United States, said (3 Hackworth, *Digest of International Law*, 231):

> "The Department wishes to point out that in a case where a person took an oath of allegiance to a foreign state while *residing* in the United States but who shortly thereafter took up a *permanent* residence outside of the United States, the Department would doubtless consider that the act of taking an oath of allegiance to a foreign state, coupled with the *permanent removal* from the United States, would result in the loss of American citizenship." (Italics supplied.)

Here again the construction adopted by the State Department conformed to the principles applied to the Act of 1868, to the effect that expatriation could not result unless there had been a bona fide change of domicile from this country to a foreign country. *The Santissima Trinidad*, 7 Wheat. 283, 348; *Comitis v. Parkerson*, 56 F. 556, 560 (C. C. La.).

In view of the findings of the trial court, it is clear that the petitioner did not intend to take up a residence in Italy or in any other foreign country, but that on the contrary she continued to maintain her residence and domicile in

the United States. The conclusion of the Court of Appeals to the contrary must therefore be vacated and set aside.

IV.

THE PETITIONER DID NOT VOLUNTARILY ABANDON HER AMERICAN CITIZENSHIP.

The District Court in the instant case made, among others, the following findings of fact (R. 64-67):

1. The plaintiff was a native born American;

2. That on or about August 1, 1940, at St. Louis, Missouri, at the suggestion of her then intended husband, Allesandro Savorgnan, plaintiff applied through the Italian Consulate at Chicago, Illinois, for Italian citizenship, and on November 23, 1940, at Chicago, Illinois, plaintiff at the request of said Savorgnan signed an Oath of Allegiance to the Italian government;

3. The application was made solely for the purpose of obtaining consent from the Italian government to plaintiff's marriage to Savorgnan who was, at the time, in the Diplomatic Service of Italy and located in this country;

4. The application and oath were both written in Italian, which language plaintiff could not, at that time, read, write or understand;

5. Plaintiff assumed that the signing of the documents was but a step in obtaining consent of the Italian government to her marriage;

6. Plaintiff married Savorgnan on December 26, 1940, at Waukon, Iowa;

7. At the time plaintiff signed the application for Italian citizenship and the Oath of Allegiance:

(a) She did so without any formal proceedings;

(b) She relied on her husband's statement and assurance that, by signing the documents, she merely acquired a technical Italian citizenship which status would, in no way, endanger her American citizenship;

(c) She had no present or fixed intention in her mind of renouncing her allegiance to this country and, in fact, never did intend to divest herself of American citizenship;

8. The plaintiff did not knowingly renounce or relinquish her American citizenship.

After reciting the substance of these findings and after adverting to the pronouncements of this Court in *Perkins v. Elg*, 307 U. S. 325 (1939), the District Court concluded that expatriation was a "matter of intent," that knowledge is necessary to intent, that plaintiff did not "knowingly renounce or relinquish her American citizenship" and that she was, therefore, entitled to judgment "declaring her to be an American citizen" (73 F. Supp. at p. 111).

Without questioning the District Court's findings of fact, the Court of Appeals reversed, holding that subjective intention, misinformation as to the legal consequences of her acts and motives for her conduct had no bearing at all on the question—the sole question being whether she intended to act as she did. Judge Swygert, writing for the Court of Appeals, stated:

> "If these factors were permitted consideration, the operation of the statute would depend not upon the voluntarily performed act of becoming naturalized in a foreign state, but upon the extent of the legal knowledge and the subjective intention or motivation of the

person involved. Such tests cannot be used to determine the operation of the statute." (171 F. (2d) at p. 159)

Why such tests cannot be used to determine the operation of this statute, the Court of Appeals did not say. In reviewing denaturalization proceedings this Court has found no such incapacity. Thus in *Knauer v. U. S.*, 328 U. S. 654 (1946) this Court affirmed the decision of the District Court, cancelling the petitioner's certificate of naturalization, in spite of the fact that the naturalization statutes had been technically complied with, on concurring in a finding that the petitioner (a former native of Germany) had taken his oath of allegiance to the United States without the subjective intention of foreswearing his allegiance to his land of birth. In the instant case surely petitioner, a native-born national, is entitled to an equally thorough and complete examination and consideration of her subjective intent and motivation. It is not reasonable to assume that what an alien must "intend" to acquire, a native-born national may lose regardless of his "intent." The expatriation statutes, dealing as they do with the precious right of nationality, cannot be applied to the acts of a national without due regard to all attendant circumstances, including his motivation and intention, and his understanding of the consequences of his acts. Failure to accord due weight to these elements runs counter to the spirit of *Knauer v. U. S.*, 328 U. S. 654 (1946) and to the decision of this Court in *Perkins v. Elg*, 307 U. S. 325, 334, 337, wherein Chief Justice Hughes stated that expatriation is "the voluntary renunciation or abandonment of nationality and allegiance" and wherein he cautioned that "rights of citizenship are not to be destroyed by an ambiguity."

The necessity for voluntary action in order to deprive an American of his citizenship is illustrated in *Dos Reis ex rel. Camara v. Nicolls*, 68 F. Supp. 773 D. C. (Mass.), 161 F. 2d 860, C. C. A. 1. There an American citizen was inducted into the Portuguese Army without his consent. At the conclusion of his military service he surreptitiously entered this country. He contended at the trial that the provisions of Section 401 (c) of the Nationality Act of 1940 that service in the armed forces of a foreign state results in loss of American nationality did not apply, because his foreign army service was not voluntary. The trial court rejected his contention and held that his army service effected expatriation (68 F. Supp. 776). Upon appeal, however, it was held (161 F. 2d 865-866) that unless such service was voluntary it did not result in loss of American citizenship. In the opinion on re-hearing, the Court said (161 F. 2d 868):

> "To 'expatriate' oneself clearly implies voluntary action. 'Expatriation is the voluntary renunciation or abandonment of nationality and allegiance.' Perkins v. Elg, 1939, 307 U. S. 325, 334, 59 S. Ct. 884, 889, 83 L. Ed. 1320. In this case Camara certainly overcame any presumption that he had voluntarily renounced or abandoned his American nationality and allegiance.
> * * *
>
> "We repeat the admonition of Perkins v. Elg, supra, at page 337 of 307 U. S., at page 891 of 59 St. Ct., 83 L. Ed. 1320: 'Rights of citizenship are not to be destroyed by an ambiguity.'"

Other authorities holding that expatriation is the voluntary renunciation or abandonment of nationality are:

30 Op. A. G. 412, 421

In Re Gogal, 75 F. Supp. 268, 271 D. C. (Penn.)

Schioler v. U. S., 75 F. Supp. 353, 355, D. C. (Ill.)

The principle which we contend to be controlling is not at war with *Mackenzie v. Hare*, 239 U. S. 299. In that case, the Citizenship Act of 1907 provided that any American woman "who marries a foreigner shall take the nationality of her husband." After the passage of the Act, an American woman married a subject of Great Britain in California. When she applied to register as a voter, her request was refused on the ground that she had ceased to be a citizen. The United States Supreme Court upheld such refusal despite the continued residence of the woman in the United States subsequent to the marriage. The Act of 1907 was held to be applicable because the woman had chosen to marry a foreigner in the face of a statutory provision that such marriage constituted a renunciation of American citizenship—"A condition voluntarily entered into with notice of the consequences," but in the opinion the Court was careful to add (page 311):

> "It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature * * *."

as, (page 312)

> "an answer to the apprehension of counsel that our construction of the legislation will make every act, though lawful, as marriage, of course, is a renunciation of citizenship."

The limitation imposed upon the scope of the decision in *Mackenzie v. Hare*, 239 U. S. 299, made it unnecessary for the Court to determine the power of Congress to enact

legislation depriving an American of citizenship except where his expatriation was voluntary. See *Dos Reis v. Nicolls*, 161 F. 2d 860, 862.

Finally, we again invite the attention of the Court to the reluctance of the Commissioner of Immigration in determining that the petitioner was not an American citizen. On the 28th day of June, 1946, the Acting Commissioner of Immigration advised the petitioner as follows (R. 1-2):

> "The matter was considered by the Commissioner, and in part he ruled as follows: 'The question is a perplexing one; the answer is not clear. Administrative practice over many years goes one way; the legal conclusions here expressed with persuasion go the other; the State Department has a third theory. This is the kind of matter which may never be settled with sureness until passed upon by the court. Accordingly, the case should be decided against the claimant in the pending administrative proceedings. She may then seek judicial review if she so chooses.'"

The petitioner followed the implied invitation of the Commissioner of Immigration to seek a judicial review of his finding, with the result that the trial court upon ample evidentiary grounds, concluded that the petitioner was an American citizen. The decision of the Court of Appeals to the contrary, therefore, should be reversed, and the judgment of the trial court should be affirmed.

CONCLUSION

In conclusion we submit that the trial court was right in holding that the petitioner had not lost her citizenship through marriage to her husband, but that she had continued to be an American citizen. In his decision, the Commissioner of Immigration frankly conceded that the plaintiff's status as a citizen was shrouded in uncertainty. The District Court had no difficulty in resolving the ambiguity in favor of the petitioner, as indeed is required by the decision in *Perkins v. Elg*, 307 U. S. 325, 337. No sound reason was advanced by the Court of Appeals for reversing the decision of the trial court. We therefore respectfully submit that the decision of the Court of Appeals should be reversed and the judgment of the trial court affirmed.

Respectfully submitted,

SUEL O. ARNOLD,
Attorney for Petitioner,

CARL A. FLOM,
Of Counsel,

APPENDIX

STATUTES INVOLVED

Section 2 of the Act of March 2, 1907, (34 Statutes 1228, 8 U. S. C. Section 7, 1934 Edition) provides in part as follows:

> "Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

Sections 3 and 4 of the Act of March 2, 1907, as it existed prior to September 22, 1922, provided as follows:

> "Sec. 3. That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relaion, by coninuing to reside therein."

> "Sec. 4. That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continue to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation."

On September 22, 1922, Sections 3 and 4 of the Act of 1907 were repealed and Section 3 was enacted to read as follows (42 Statutes 1022, 8 U. S. C. Section 9, 1934 Edition):

> "A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after March 3, 1931, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens."

Section 104 of the Nationality Act of 1940 (8 U. S. C. Section 504) provides that for the purpose of Section 403 of that Act, the term "place of residence" shall be as follows:

> "For the purposes of section * * * 403 * * * of this chapter the place of general abode shall be deemed the place of residence."

Section 347 of the Nationality Act of 1940 (8 U. S. C. Section 747) provides in part that it shall not be construed to:

> "* * * affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this chapter shall take effect; but as to such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this chapter, are hereby continued in force and effect."

Section 401 of the Nationality Act of 1940 (8 U. S. C. Section 801) provides in part as follows:

> "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(a) Obotaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person;

(b) Taking an oath or making an affirmation or other formal declaration to a foreign state; or

(c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or

(d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or

(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or

(f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

(g) Deserting the military or naval service of the United States in time of war, provided he is convicted thereof by a court martial; or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction."

Section 403 of the Nationality Act of 1940, (8 U. S. C. ection 803) provides:

"(a) Except as provided in subsections (g) and (h) of section 401, no national can expatriate himself, or be expatriated, under this section while within the

United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and when the national thereafter takes up a residence abroad."

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 709

ROSETTE SORGE SAVORGNAN, PETITIONER

v.

THE UNITED STATES OF AMERICA, TOM C. CLARK, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 86–92) is reported at 171 F. 2d 155. The opinion of the District Court (R. 61–67) is reported at 73 F. Supp. 109.

JURISDICTION

The judgment of the Court of Appeals was entered December 14, 1948 (R. 93), and a petition for rehearing was denied January 8, 1949 (R. 94). The petition for a writ of certiorari was

filed April 8, 1949. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTIONS PRESENTED

In 1940, petitioner voluntarily acquired Italian citizenship and took an oath of allegiance to Italy, while in the United States, and in July 1941 she departed with her Italian husband for Italy where she lived until 1945. The questions presented are:

1. Whether she lost her American citizenship under Section 2 of the Act of March 2, 1907.

2. Whether she lost her citizenship under Sections 401 and 403 of the Nationality Act of 1940 (effective January 13, 1941).

3. Whether, if the establishment of foreign residence is required to effect expatriation, the residence petitioner took up in Italy was sufficient.

4. Whether a subjective intent to renounce or surrender American citizenship is necessary to effect expatriation, in addition to the intentional and voluntary performance of the acts specified in the statutes as resulting in loss of nationality.

STATUTES INVOLVED

Section 2 of the Act of March 2, 1907 [1] (34 Stat. 1228) provided in relevant part as follows:

> any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in confor-

[1] Repealed by the Nationality Act of 1940, effective January 13, 1941. 54 Stat. 1172.

mity with its laws, or when he has taken an oath of allegiance to any foreign state.

Section 401 of the Nationality Act of 1940 (54 Stat. 1168; 8 U. S. C. 801) (effective January 13, 1941) provides in relevant part:

> A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person; * * *
>
> (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; * * *

Section 403 (a) of the same Act provides:

> (a) Except as provided in subsections (g) and (h) of section 401, no national can expatriate himself, or be expatriated, under this section [2] while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section [2] if and when the

[2] It is obvious from the context that the phrase "this section" refers to Section 401. In the bill as originally introduced this provision was incorporated in Section 401 (h). See Vol. 2, page 25, Hearings of the House Committee on Immigration and Naturalization, 76th Congress. In all probability, when it was subsequently made a part of Section 403 the desirability of changing "this section" to "Section 401" was overlooked.

national thereafter takes up a residence abroad.

STATEMENT

Petitioner was born in Reedsburg, Wisconsin, on May 2, 1915 (R. 9, 64). She resided continuously in the United States until July 15, 1941 (R. 10, 57, 65). She is a college graduate (R. 12). She met her husband, Allessandro Savorgnan, who was then Italian Vice Consul at St. Louis, Missouri, in the latter part of 1939 or early in 1940 (R. 13, 39, 58). He informed her that under Italian law she would have to acquire Italian citizenship before he could secure the required royal consent to their marriage (R. 10, 41–42). Accordingly, on March 28, 1940, petitioner made application for Italian citizenship (R. 13–17, 40, 48, 65), the application being in the Italian language which petitioner did not then understand (R. 13). Italian citizenship was granted to her by a royal decree law of August 23, 1940 (R. 44, 49). On November 23, 1940, she appeared at the Italian Consulate in Chicago and signed an oath, also in Italian, renouncing American citizenship and swearing allegiance to the King of Italy (Ex. 2, R. 49; R. 9, 18–21, 43–44, 58, 65). Petitioner and Mr. Savorgnan were married on December 26, 1940, in Waukon, Iowa (R. 9, 65).

On February 5, 1941, petitioner signed a United States Department of State form, entitled "Foreign Official Status Notification," stating that her nationality as of that date was Italian and that

her previous nationality had been "American, U. S. A." (R. 23, 50, 65).

In July 1941, when Italian diplomatic officials were required to leave the United States, petitioner and her husband embarked for Italy, she using an Italian diplomatic passport (R. 25, 26, 58, 65). She remained in Europe from the date of her arrival in Italy until her return to the United States in the latter part of 1945 (R. 10, 58, 59, 65). Petitioner never voted in Italy, but did vote in Wisconsin after her return to the United States in 1945 (R. 36).

After the entry of American troops into Rome in June 1944, petitioner identified herself to American military authorities and was thereafter employed by the Allied Control Commission until the autumn of 1945 (R. 11, 28, 59, 65–66). When the American Consulate was re-established in Rome in the latter part of 1944, she applied for registration as an American citizen (R. 11, 32, 66). By letter dated January 24, 1945, the Consulate advised her that her application had been approved by the State Department (R. 32–33, 55, 66). When, shortly thereafter, she made application for an American passport, she was informed that her application for registration as an American citizen was being reconsidered, and on or about June 1, 1945, she was further informed that the State Department was of the opinion that she had expatriated herself and that a passport would not be issued to her (R. 59, 66). On

November 1, 1945, after having received word that her mother was dying (R. 11, 34), petitioner reentered the United States on an Italian diplomatic passport (R. 11, 59, 66).

On February 12, 1946, petitioner filed an application in affidavit form with the Commissioner of Immigration and Naturalization for correction of the record of her admission to the United States to show her status as an American citizen at the time of her entry (R. 57–60). On June 28, 1946, her application was denied (R. 5).

Petitioner thereafter filed a petition in the United States District Court for the Western District of Wisconsin seeking a declaratory judgment declaring her to be an American citizen (R. 4–5). After a hearing, the petition was granted (R. 67). The District Court found as a fact that she did not knowingly renounce or relinquish her American citizenship and accordingly held that she was entitled to a judgment adjudging her to have been since her birth and to have remained a citizen of the United States.

The Court of Appeals unanimously reversed the District Court, holding that whether the Act of March 2, 1907, or the Nationality Act of 1940 applied, petitioner had expatriated herself.

ARGUMENT

The Court of Appeals correctly concluded, on several grounds, that petitioner was no longer an American citizen, and neither the decision nor

any of the separate reasons advanced for the holding warrant review here. The only matter discussed by the court as to which there is any substantial doubt concerns a controversial interpretation of the Act of March 2, 1907, which was repealed in 1940 and has no current vitality. The other bases of the holding are all clearly correct.

1. The court below properly held, in the first place, that petitioner was expatriated under the provisions of Section 2 of the 1907 Act (*supra*, pp. 2–3). She admittedly applied for Italian citizenship and became an Italian citizen in accordance with Italy's laws, and also signed an oath swearing allegiance to the King of Italy. *Supra*, p. 4.

a. On the authority of *Mackenzie* v. *Hare*, 239 U. S. 299, construing the cognate provisions of Section 3 of the 1907 statute, the Court of Appeals ruled "that a subsequent removal from the country was not necessary to effect the expatriation of a United States citizen who became naturalized in or took an oath of allegiance to a foreign state while residing within the United States" (R. 90). This conclusion is strongly supported by the rationale of the *Mackenzie* case as well as by the unqualified language of the Act, but, as the court recognized, it is contrary to the consistent administrative interpretation and to the accepted principles of expatriation prevailing at the time the 1907 statute was enacted (R. 89).

There is no occasion, however, for this Court to resolve the issue, since the instant decision also stands on several independent grounds, and the 1941 repeal of the statute makes the dispute almost wholly academic and historical at this time.[3]

b. Alternatively, the court held that if foreign residence was a necessary concomitant of expatriation under the 1907 Act, then expatriation resulted when petitioner took up residence in Italy in July 1941, after her Italian naturalization in 1940 (R. 90). *Supra*, p. 5. By July 1941, the 1907 provisions had been repealed (*supra*, p. 2, fn. 1), but the saving clause of the 1940 Act plainly sufficed to preserve the earlier legislation to cover petitioner's subsequent acquisition of foreign residence.[4]

c. (1) In this Court, for the first time, petitioner advances the further argument that the 1907 Act requires that the operative act of naturalization must take place in a foreign country, and since she was physically present in the United States at the time of her Italian naturalization,

[3] The Nationality Act of 1940 (effective January 1941) specifically requires the taking up of residence abroad to effect expatriation in these circumstances. *Supra*, pp. 3–4.

[4] The saving clause (Section 347) of the Nationality Act of 1940 provided (54 Stat. 1168, 8 U. S. C. 747) that nothing in the repeal provisions, *inter alia*, "shall be construed to affect * * * any act * * * done or existing, at the time this Act shall take effect; but as to all such * * * acts * * * the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect."

she could never be expatriated (Pet. 8, 19–20).[4] But the statutory words "naturalized in any foreign state", on which petitioner relies, obviously refer to the state which is the object of the new allegiance and do not connote the physical presence of the person naturalized on the foreign state's territory at the moment of change of allegiance. Otherwise, an American citizen who acquired foreign citizenship while within the United States, as petitioner admittedly did, and thereafter left the United States with intent never to return, would nevertheless continue indefinitely to remain an American citizen under our law. That plainly erroneous construction of the 1907 Act is at war with the clear purpose of Congress to expatriate Americans who voluntarily assume foreign nationality, and cannot be reconciled with the related provision of the 1940 Act which uses similar terms ("obtaining naturalization in a foreign state") while at the same time explicitly recognizing that the change of allegiance can occur within the United States. *Supra*, pp. 3–4.[5]

(2) Moreover, both statutes also specify the taking of a foreign oath of allegiance as result-

[4] In her brief in the Court of Appeals, petitioner stated that this was a point she might have proffered, but had not (p. 14).

[5] *Petition of Prack*, 60 F. 2d 171 (W. D. Pa.), cited by petitioner (Pet. 8, 20), does not hold, or even suggest, that the act of naturalization is ineffective if the applicant is within the United States.

ing in expatriation, without any indication that an oath taken in this country is ineffective—and petitioner signed such an oath in 1940. *Supra,* p. 4. Her present intimation that she did not know she was taking an oath of allegiance is unsupported by the record or by the trial court's findings. The District Court found no more than that petitioner had signed in Italian, a language she did not understand, an oath of allegiance to Italy (R. 65), and that no formalities attended the signing (R. 66); but there was no finding that she was unaware, or uninformed, of the nature of her oath, nor that the lack of formality nullified the oath. And it is highly improbable that a college-educated young women of 25 (R. 1, 12), who knew that she had applied for Italian citizenship and that the document she was signing was connected with acquiring the new nationality, did not understand that she was swearing to be faithful to "H. M. the King of Italy and Albania, Emperor of Ethiopia" (R. 20, 49). As for the minor claim that certain formalities were lacking in the taking of the oath, the fact is that the document, regular on its face, was duly signed before the witnesses whose signatures appear thereon and that no formalities were required under Italian law (R. 44–45, 49–50).

2. The second major ground of the Court of Appeals' decision was that petitioner was effectively expatriated under the Nationality Act of 1940 (R. 90–91). That statute provides for loss

of American nationality by "obtaining naturalization in a foreign state" or by "taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state", and if these acts or conditions occur within this country's territory expatriation results "if and when the national thereafter takes up a residence abroad." *Supra*, pp. 3–4. We believe the Court of Appeals was entirely correct in holding (R. 91) that naturalization is a status, and that once the act of naturalization is performed the resulting citizenship persists and is not terminated except by an act of denaturalization. Cf. *Perkins* v. *Elg*, 307 U. S. 325, 329. Consequently, petitioner's acquisition of Italian citizenship, even though occurring prior to the effective date of the 1940 Act, endowed her with a status fulfilling one of the specific conditions of the 1940 Act, which ripened into expatriation when she took up residence abroad, after the new Act became effective. Cf. *Petition of Prack*, 60 F. 2d 171, 172 (W. D. Pa.); *Petition of Peterson*, 33 F. Supp. 615, 616 (E. D. Wash.); *In re Varat*, 1 F. Supp. 898 (E. D. N. Y.); 39 Op. Atty. Gen. 474. The words of the statute do not require the first acquisition of foreign nationality to have taken place after its effective date, and a sensible view of its language and purpose requires that it cover the case of one who, like petitioner, had obtained naturalization as a citizen of a foreign state prior to the enactment of the Nationality Act, who had continued in

that status until and after the legislation's effective date, and who then took up foreign residence.*

3. Petitioner attempts to meet these arguments by denying that she ever took up residence abroad so as to consummate her expatriation (Pet. 10, 16). The District Court found that when she left in July 1941, she did not intend to establish a permanent residence abroad or to abandon her residence in the United States (R. 65), but it is likewise undisputed that she departed in order to reside with her husband who was a member of the Italian diplomatic service and was being compelled to leave this country, that her stay abroad was for an indefinite period of time, and that there then existed a serious deterioration of relations between Italy and the United States which verged upon and shortly thereafter materialized into war (R. 34–35, 65, 92). The Court of Appeals properly held that these facts show that petitioner took up a foreign residence within the conditions of the 1940 Act, as well as any similar requirement of the 1907 Act (R. 92). Section 104 of the 1940 statute (8 U. S. C. 504) defines place of residence, for expatriation purposes, as

* It should be noted that unless the 1940 Act's saving clause is held to preserve the 1907 Act sufficiently to cover this situation, as we argue above (*supra*, p. 8), or the 1940 Act itself governs, as we urge at this point, there would be no statutory provision for expatriation—assuming that foreign residence is essential—covering the situation in which naturalization preceded, and departure followed, the effective date of the 1940 legislation.

"place of general abode", and this term was intended to connote neither permanence of residence nor domicile, but principal dwelling place.[7] It is hardly doubtful that petitioner's principal dwelling place, after July 1941, was Italy, and that is enough for expatriation under either statute.

4. Finally, the Court of Appeals could not do otherwise, in our view, than reject petitioner's basic contention that a subjective intent to abandon American citizenship is essential to effect repatriation (R. 91–92). Petitioner admits, and the trial court found, that she applied for, desired, and obtained Italian nationality (R. 10, 13, 16, 21, 22, 50, 57, 65, 67), and it is this act of naturalization which Congress, in plainest words, has made decisive, both in the 1907 and in the 1940 statutes. That significant act in itself constitutes overt action gravely inconsistent with American citizenship, and it is immaterial that

---

[7] See the note of the sponsors of the bill which eventuated in the Nationality Act (House Committee Print, Codification of the Nationality Laws of the United States, Part 1, p. 6):

"Definitions of 'residence' frequently include the element of intent as to the future place of abode. However, in Section 104 hereof no mention is made of intent, and the actual 'place of general abode' is the sole test for determining residence. The words 'place of general abode,' which are taken from the second paragraph of Section 2 of the Citizenship Act of March 2, 1907 (34 Stat. 1228), seem to speak for themselves. They relate to the principal dwelling place of a person."

In contrast, Section 308 of the Act (8 U. S. C. 708) uses the term "permanent residence".

the newly naturalized person may not intend to renounce allegiance to this country or to relinquish American citizenship, or that she may have mistakenly believed that it was possible to retain American nationality while acquiring a new citizenship.[5] These beliefs in no way alter the definitive character, or the wholly voluntary nature, of the acts which Congress has prescribed as sufficient to establish expatriation.

Unlike the plaintiff in *Perkins* v. *Elg*, 307 U. S. 325, whose asserted foreign nationality was derivatively acquired during minority by the naturalization of her parents in Sweden, petitioner is an adult who intentionally undertook to acquire Italian nationality for reasons of her own, and then went to live in that country. The most that can be said is that while her acts were conscious, deliberate, and voluntary, their consequences were unexpected and repugnant. Those consequences, however, are imposed by statute upon the acts which petitioner performed, and these acts do not depend for their effectiveness upon her knowledge of, or willingness to assume, the necessary consequences.[6]

---

[5] But see petitioner's statement to the Department of State, in February 1941, that her "present nationality" was "Italian" and her "previous nationality" was "American, U. S. A." (R. 50).

[6] There is, of course, no conflict—as the *amicus curiae* asserts (Br. pp. 6–9)—with *Doreau* v. *Marshall*, 170 F. 2d 721 (C. A. 3), which held that a foreign naturalization impelled by "true duress" would not constitute expatriation. Here, there is no suggestion of duress, and the Third Circuit care-

CONCLUSION

The decision below is correct, and stands upon several valid grounds, none of which warrant review here. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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MAY 1949.

---

fully distinguished "the forsaking of American citizenship, even in a difficult situation, as a matter of expediency." 170 F. 2d 724.

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No. 48

In the Supreme Court of the United States

October Term, 1949

[redacted]

v.

The United States of America, [redacted]

[redacted]

[redacted]

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 48

ROSETTE SORGE SAVORGNAN, PETITIONER

v.

THE UNITED STATES OF AMERICA, J. HOWARD MCGRATH, THE ATTORNEY GENERAL FOR THE UNITED STATES OF AMERICA, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals (R. 86-92) is reported at 171 F. 2d 155. The opinion of the District Court (R. 61-64) is reported at 73 F. Supp. 109.

JURISDICTION

The judgment of the Court of Appeals was entered December 14, 1948 (R. 93), and a petition

for rehearing was denied January 8, 1949 (R. 94). The petition for a writ of certiorari was filed April 8, 1949, and was granted May 31, 1949 (R. 95). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

In 1940, petitioner voluntarily acquired Italian citizenship through naturalization, while in the United States, and in July 1941, she departed with her husband, an Italian diplomatic official, for Italy where she lived until 1945. The questions presented are:

1. Whether a subjective intent to renounce or surrender American citizenship is necessary to effect expatriation, in addition to the voluntary and intentional acquisition of foreign nationality through naturalization, which Congress has declared to be an act of expatriation incurring loss of American nationality.

2. Whether, under Section 2 of the Act of March 2, 1907, expatriation was effected by an American citizen's acquisition of foreign nationality through naturalization, while within the United States.

3. Whether, under Section 2 of the Act of March 2, 1907, a person lost his American nationality by becoming a naturalized citizen of a foreign state, irrespective of whether or not he thereafter took up a foreign residence.

If Questions 2 and 3 are answered negatively, the following additional questions are presented:

4. Whether, foreign naturalization having been acquired prior to the repeal of Section 2 of the 1907 Act by the Nationality Act of 1940, the taking up of a foreign residence after the effective date of the repeal (January 13, 1941) could operate to complete the process of expatriation, either under the repealed statute or under the 1940 Act.

5. Whether, in the circumstances of this case, petitioner took up residence in Italy, following her Italian naturalization, within the meaning of the statutory expatriation provision defining residence as "the place of general abode."

STATUTES INVOLVED

Section 2 of the Act of March 2, 1907, c. 2534, 34 Stat. 1228 (8 U.S.C. [1934 ed.] 17),[1] provided in its first paragraph:

> Any American citizen shall be deemed to have expatriated himself when he has been naturalized ~~in~~ any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.
>
> * * * * *

Sections 401, 403, and 104 of the Nationality Act of October 14, 1940, c. 876, 54 Stat. 1138, 1168-1170,

---

[1] Repealed by the Nationality Act of 1940, c. 876, § 504, 54 Stat. 1172, which became effective January 13, 1941 (*id.*, § 601, 54 Stat. 1174).

(effective January 13, 1941, § 601, 54 Stat. 1174), provide in relevant part:

> Sec. 401 [8 U.S.C. 801]. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: * * * [1a]; or
>
> (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state; or
>
> (c) Entering, or serving in, the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state; or
>
> (d) Accepting, or performing the duties of, any office, post, or employment under the government of a foreign state or political subdivision thereof for which only nationals of such state are eligible; or
>
> (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory; or
>
> (f) Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

[1a] Sec. 401 (a) is set out in full text in the Appendix, pp. 66-7.

(g) Deserting the military or naval service of the United States in time of war, provided he is convicted thereof by a court martial;[2] or

(h) Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States, provided he is convicted thereof by a court martial or by a court of competent jurisdiction.[3]

* * * * *

Sec. 403 (as amended) [8 U.S.C. 803] (a) Except as provided for in subsections (g), (h) and (i) of section 401, no national can expatriate himself, or be expatriated, under this section[4] while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and when the national thereafter takes up a residence abroad.

---

[2] Subsection (g) was amended in 1944, 58 Stat. 4, the amendment having no relevance here.

[3] Two additional means of losing one's nationality—(i) formal renunciation of nationality in this country in war time, if approved by the Attorney General as not contrary to the interests of national defense, and (j) departing the country to avoid military service—were provided for in two 1944 amendments, 58 Stat. 677, 746.

[4] It is obvious from the context that the phrase "this section," as used here, and a few lines later, refers to Section 401. In the bill as originally introduced, this provision (§ 403) was incorporated as a proviso in Section 401. See Vol. 2, page 25, Hearings of the House Committee on Immigration and Naturalization, 76th Congress. In all probability, when it was subsequently made a part of Section 403 the desirability of changing "this section" to "Section 401" was overlooked.

> Sec. 104 [8 U.S.C. 504]. For the purposes of section[s] . . . 403 [8 U.S.C. 803] . . . of this Act, the place of general abode shall be deemed the place of residence.

STATEMENT

This proceeding arose with the filing by petitioner, in the United States District Court for the Western District of Wisconsin, in August and November 1946, of a petition (R. 1-2) and an amended petition (R. 4-5) for a declaratory judgment declaring her to be an American citizen.[5] Answers were filed (R. 3-4, 6-7) and a hearing was held (R. 8-47), following which the District Court (Stone, D. J.) entered an order (R. 67) and opinion (R. 61-64) declaring petitioner to be an American citizen. On respondents' appeal to the Court of Appeals for the Seventh Circuit, the judgment of the District Court was reversed (R. 93).

The evidence adduced at the hearing in the District Court consists of testimony by petitioner (R. 9-37) and her husband (R. 37-47), and certain documentary exhibits (R. 48-60). It may be summarized as follows:

1. *Petitioner's acts.*—Petitioner was born on May 2, 1915, in Reedsburg, Wisconsin (R. 9). At the age of nine, she moved with her parents to

[5] Such a proceeding is authorized by Section 503 of the Nationality Act of 1940, c. 376, 54 Stat. 1171 (8 U.S.C. 903), Appendix, *infra*, pp. 65-6.

La Crosse, Wisconsin, where her father still lives and which she claims as the place of her permanent residence (R. 9, 35). She resided continuously in the United States until about July 15, 1941 (R. 10, 57, 65). She is a college graduate (R. 12).

Petitioner met her husband, Allessandro Savorgnan, who was then Italian Vice Consul at St. Louis, Missouri, in the latter part of 1939 or early in 1940 (R. 13, 39, 43, 58). He informed her that under Italian law she would have to become an Italian citizen before he could obtain royal consent to their marriage, such consent being required in the case of persons in the Italian consular service (R. 10, 16, 41-42). Accordingly, on March 28, 1940, petitioner signed an application for Italian citizenship (R. 13-17, 40; Ex. 1, R. 48). The application was prepared for her signature by Savorgnan, and was addressed to the Royal Ministry of Foreign Affairs in Rome (R. 15, 40). It was in the Italian language, which petitioner did not then understand (R. 13). By a royal decree law of August 23, 1940, petitioner was granted Italian citizenship (R. 44, 49). On November 23, 1940, she appeared at the Italian Consulate in Chicago and signed an oath, also in Italian, renouncing her American citizenship and swearing allegiance to the King of Italy (Ex. 2, R. 49-50; R. 9, 18-21, 43-44, 58).[6] Petitioner

[6] The document signed by petitioner, translated, reads in part as follows (Ex. 2, R. 49-50):

"On this day November 23rd, 1940, 19th of the Fascist Era, in the Chancery of this Royal Consulate General * * *; Miss Rosetta Andrus Sorge, * * * to whom in virtue of Article 4

made a special trip to Chicago from La Crosse, Wisconsin, where she was living at the time, in order to sign this oath. She was accompanied to the Consulate by Savorgnan, who also made a special trip for this purpose from his station in St. Louis. (R. 18, 43-44.) Petitioner and Savorgnan were married a month later, on December 26, 1940, in Waukon, Iowa (R. 9).

On February 5, 1941, petitioner signed a United States Department of State form, entitled "Foreign Official Status Notification" (Ex. 3, R. 50-55), stating that her "Present nationality" was "Italian" and her "Previous nationality or nationalities, if any" was "American, U.S.A." (R. 50, 23). This document was in English (R. 23).

In July 1941, when Italian diplomatic officials were required to leave the United States, petitioner and her husband embarked for Italy, she

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of the law of June 13, 1912 #555 modified by article 1 of the Royal Decree Law of the first of December 1934 #1997, is conceded the Italian citizenship with the Royal Decree law of August 23, 1940 XVIII, registered in the Corte dei Conti on September 26 the u.s., came before us, Comm. Riccardo Moscati, R. Consul General in this post, invested with the functions of Civil status official.

"The person in question, having been requested to take an oath as prescribed by article 5 of the aforementioned law, * * * pronounced the following words:

"'I, Rosetta Andrus Sorge, born an American citizen, declare I renounce and in truth do renounce my American citizenship, and swear to be faithful to H. M. the King of Italy and Albania, Emperor of Ethiopia, to his royal successors, and to loyally observe the statutes and other laws of the Kingdom of Italy.'

"Present were as witnesses Mr. Giuseppe Dall' Agnel fu Antonio * * *, Royal Chancellor * * *, and * * * Edoardo a Fiori di Giovanni, * * * Legal attache * * *."

using an Italian diplomatic passport (R. 10, 25, 26, 58). She remained in Italy from the date of her arrival until her return to the United States in November 1945, except for a six-month stay in Salzburg, Germany (R 10, 26-27, 59). While in Italy she lived with her husband and his family in Rome, where the husband worked in the Italian foreign ministry (R. 26-27, 32). She learned to read and speak Italian quite fluently during this period. (R. 14-15, 30).

After the entry of American troops into Rome in June 1944, petitioner identified herself to American military authorities and was thereafter employed by the Allied Control Commission until her return to the United States in the autumn of 1945 (R. 11, 28, 59). On October 23, 1944, shortly following the reestablishment of the American Consulate in Rome, she applied for registration as an American citizen (R. 11, 55, 59). By letter dated January 24, 1945, the Consulate advised her that her application had been approved by the State Department (Ex. 4, R. 55; R. 32-33). She then applied for an American passport with which to return to the United States (R 34). She was told that a passport could not be issued until she had "evidence of transportation" (R. 34). By April 1945, she had made transportation arrangements through American military and naval authorities, but when she again requested a passport she was advised that a passport would not be issued for the time-being because her application for registra-

tion as an American citizen was being reconsidered (R. 59). On or about June 1, 1945, she was advised by the Consulate that the State Department was of the opinion that she had expatriated herself, and that consequently no passport would be issued to her (R. 59).

Some time thereafter, petitioner learned that her mother was dying, and so, in order to expedite her return to this country, she sailed on an Italian diplomatic passport, which she procured without trouble from the Italian foreign ministry, where her husband worked (R. 11, 34, 59). She landed at Boston on November 1, 1945, being admitted under a "visitor's visa" for a period of six months (R. 59). Her mother died prior to her arrival in this country (R. 11).

On February 12, 1946, petitioner filed an application in affidavit form requesting the Commissioner of Immigration and Naturalization to "correct the record" of her admission to the United States so as to show her status as an American citizen at the time of her entry (Ex. 5, R. 57-60). On June 28, 1946, her application was denied with the suggestion that the question of her citizenship status should be settled by a court in a declaratory judgment proceeding (R. 5, 7). This proceeding followed.

2. *Petitioner's and her husband's testimony respecting her intent to renounce American citizenship.*—(a) Petitioner testified at the hearing in

the District Court, concerning her signing of the application for Italian citizenship on March 28, 1940, that, though she was aware of the nature of the document, she did not believe that, by signing it, she was in any way endangering her American citizenship (R. 16). "I was told," she testified, "that my [prospective] husband, being an official of the foreign service, could not marry a person who did not have an Italian citizenship; and so this, apparently, * * * is an application to acquire that Italian citizenship. But I never, never in any way thought it would ever endanger my American citizenship" (*ibid.*). She considered the application, she stated, "a formality in order to be able to marry my husband" (*ibid.*). But she definitely knew that she was applying for Italian citizenship (R. 10, 13, 16, 22, 58).

Petitioner's husband testified that when he contemplated marrying petitioner he discussed with some lawyer friends of his "what the status of [his] wife's citizenship would be after [their] marriage", and that these friends advised him that in their opinion any steps petitioner might take "in order to acquire Italian citizenship would not affect her status as an American citizen" (R. 37-38). Accordingly, he testified, he told petitioner that she could apply for Italian citizenship without affecting her American citizenship (R. 38, 43). He believed that she could acquire and maintain a dual citizenship in both countries (R. 38).

(b) Petitioner testified, with respect to her signing of the oath of allegiance to the King of Italy and renunciation of her American citizenship on November 23, 1940, that shortly before that time she received a telephone call in La Crosse, Wisconsin, from the Italian Consulate in Chicago, to the effect that "the consent to marry [her] husband," which he had been for a year "trying to procure, had finally come through" (R. 17-18). The call was "in Italian" and she "understood very little of it" (R. 17). Her husband-to-be, who was at that time in St. Louis, then made arrangements for her to go to Chicago, where they met and proceeded to the Italian Consulate (R. 18). At the Consulate she "was taken into a room and given this paper * * * to sign, which was written in Italian, and which [she] did not understand" (R. 18). No one explained the content of the paper to her, she testified (R. 18), and she did not think that by signing the paper she was renouncing her American citizenship (R. 21). There was, she said, no ceremony connected with the signing, such as the raising of her hand (R. 19). She would not have signed the paper, she stated, had she realized it meant loss of her American citizenship (R. 10). She admitted, however, that she then realized she was an Italian citizen, and tha the signing of the paper had to do with acquisition of Italian citizenship. (R. 13, 21, 22, 58).

Petitioner's husband testified that in November 1940 he told petitioner that "there were some

other formalities that she should accomplish before [he] could finally get the permission, the consent to marry her; and she would have to sign some papers at the Consulate General in Chicago" (R. 43). He corroborated petitioner's testimony as to the absence of formality attending her signing of the oath of allegiance to Italy (R. 44-45),[7] and added that "technically speaking, the Italian citizenship was bestowed upon her when the decree was issued" in the preceding August, subject to her signing the oath of allegiance (R. 44). He did not have a "clear recollection" of what he told petitioner respecting the nature of the document she signed, he said, but testified that "there was nothing that happened at that time that would put her on the alert, or apprise her of the fact that she was renouncing her [American] citizenship" (R. 45).

(c) Petitioner testified that she had no recollection whatever concerning the document she signed on February 5, 1941—the State Department "Foreign Official Status Notification" which listed her "present nationality" as Italian and her "previous nationality" as American (R. 23-24). *Supra*, p. 8. She identified her signature on the document and recognized the photograph attached to it as hers, but denied having been advised by her

[7] Petitioner's husband explained that Italian law does not require any "solemn formalities" in the administration of the oath incident to the acquisition of Italian citizenship (R. 44-45).

husband that the filing of such a document was required in the case of a person who had "changed his citizenship" (R. 24. She denied having filed the document herself, and assumed that her husband filed it for her (R. 24). She did not remember the circumstances (R. 24).

(d) Petitioner testified that when she left the United States for Italy in July of 1941 she had no intention of establishing a permanent residence abroad (R. 10). She left to be with her husband, who "was going on a mission," she said (R. 34).[8] She admitted her stay abroad was to be for an indefinite period, but "was hoping [she] would be back very shortly" (R. 34). She explained the fact that she sailed for Italy on an Italian diplomatic passport by stating that her departure was so sudden that she did not have time to secure an American passport (R. 26). Between the date of her arrival in Italy in July 1941 and the outbreak of war between the United States and Italy in December 1941, she testified, she was unable to get in touch with any American authorities in Italy relative to "a clarification of [her] citizenship status", for the reason that the American con-

[8] Petitioner was planning, at the time she testified in January 1947, to leave the United States again for what she called a "temporary period", in company with her husband who was about to depart for Venezuela on another "mission" as First Secretary of the Italian Legation in Caracas (R. 35). According to an affidavit filed by petitioner's counsel in the District Court on June 25, 1947, several months following the hearing, petitioner and her husband were "still outside the continental limits of the United States" (R. 56).

sulates had been closed there (R. 27). She claimed that during this period she went to the Swiss Legation, "the only office which could serve Americans at that time," and submitted an "application for a passport, in case eventually [she] could get out through some other channel" (R. 27). She did not attempt to communicate with any American authorities in this country, though she "presumed" this was possible prior to the outbreak of war (R. 27-28). She also did not communicate with her parents in this country from the time of her arrival in Italy until her return to the United States (R. 32). She never voted in Italy and did not know whether elections had been held there while she was there, though she thought there had been (R. 36). She was a registered voter in La Crosse, Wisconsin, at the time of the hearing below, and voted there in an election after her return to this country in 1945 (R. 23, 36). She always considered herself an American citizen, she testified, never intended to renounce her allegiance to the United States, and never intended to become a citizen of Italy (R. 37)[9]

3. *The District Court's findings of fact* (R. 64-67).—The District Court, following the hearing, found that petitioner had applied for and obtained

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[9] This last remark was apparently inadvertent, since she had previously testified several times (*supra*, pp. 7, 11, 12) that she knowingly assumed Italian citizenship in order to marry her husband, and realized she was an Italian citizen after signing the document at Chicago in November 1940.

Italian citizenship, but that she assumed that her signing of the application for Italian citizenship and her signing of the oath of allegiance to Italy were but "step[s] in obtaining consent of the Italian Government to her marriage" (R. 65); that the signing of neither document was accompanied by "any formal proceedings", and when she signed them she "had no intention whatsoever of renouncing her allegiance to this country, or establishing a permanent residence in any other country" (R. 66-67); that, in signing these documents, she relied on her husband's "statement and assurance" that she thereby "merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship" (R. 67); that on February 5, 1941, following her marriage, she "signed a form filled out in the English language and prepared by her husband, required to be filed with the United States Department of State by members of the families of foreign diplomats residing in the United States, and in this form she listed her present nationality as Italian" (R. 65); that, due to the suddenness with which her husband was required to leave this country for Italy in July 1941, she left with him without having had time in which to obtain an American passport, and consequently departed on a "foreign visitor's visa" (*ibid.*); that she left this country for Italy "without any intention of establishing a permanent residence abroad or abandoning her residence in the United States, or of divesting herself of her American citizen-

ship" (*ibid.*); that "After her arrival in Italy she took no steps whatsoever to renounce her allegiance to the United States, but was in fact, at the first opportunity, employed in Italy by the Allied Control Commission" (R. 67); that her absence from the United States from July 1941 to November 1945, "was due to the war time conditions" (R. 65); that while she "was awaiting the decision of the State Department with reference to her status as an American citizen [in 1945] she received word of her mother's serious illness and made plans to promptly return to this country, and it was for that purpose she used the Italian Diplomatic Passport" (R. 66); and that she "in fact never did intend to divest herself of American citizenship" and "did not knowingly renounce or relinquish" such citizenship (R. 67).

On the basis of these findings, the District Court held that, since "Knowledge is necessary to intention" and since, in the court's opinion, petitioner "did not know or realize [when she signed the application for Italian citizenship and the oath of allegiance to Italy] that she was renouncing allegiance to this country," she did not in fact expatriate herself (R. 63). Accordingly, a judgment was entered declaring petitioner to be an American citizen (R. 67).

4. *The Court of Appeals' decision.*—The Court of Appeals, reversing the judgment of the District Court, held that petitioner had expatriated

herself and lost her American citizenship (R. 86-92). The court held that, on the facts as found by the District Court, petitioner had "consciously and voluntarily applied for and obtained naturalization in a foreign state," and under the provisions of our statutes those voluntary acts "effected a loss of her American citizenship," regardless of her subjective intent to remain an American or of whether "she knowingly renounced or relinquished that citizenship" (R. 91-92). As for the taking up of a foreign residence, the court ruled (1) that Section 2 of the 1907 Act, which was the governing law until it was superseded on January 13, 1941, by the Nationality Act of 1940, was the statute applicable to this case, and that, properly construed, it did not make establishment of a foreign residence a requisite of expatriation (R. 89-90); but (2) that, in any event, petitioner did eventually take up a foreign residence in July 1941, and this had the effect of completing the process of her expatriation, begun in the preceding year by her acquisition of Italian citizenship (R. 90-91, 92).

SUMMARY OF ARGUMENT

This case presents, substantially, three issues—(1) whether petitioner expatriated herself by voluntarily and intentionally acquiring Italian citizenship through naturalization, while in the United States, even though she had no subjective intention at the time to renounce or surrender her American nationality; (2) whether it was necessary for her to establish a foreign residence in order to

complete the process of her expatriation; and (3) whether, if so, she fulfilled this requirement.

I

A. By her own admission, petitioner applied for and obtained Italian naturalization. She did this voluntarily and intentionally, for reasons of her own. In the Act of March 2, 1907, and again in the Nationality Act of 1940, Congress has declared this to be a decisive act of expatriation, resulting in loss of American citizenship, and that consequence necessarily followed her action. Her motive in seeking Italian citizenship was obviously irrelevant. And, since she had presumptive notice of the law, her actual unawareness that loss of citizenship was a legal consequence of her act was, on similar well-known principles, no excuse. Nor can it be said that Congress has added, either explicitly or implicitly, any requirement of subjective intention to abandon American citizenship (as well as to acquire a new nationality), as an inherent precondition of expatriation.

The American doctrine of nationality and of expatriation, which has been the guidepost for congressional and executive action since the 1850's, holds that foreigners voluntarily securing naturalization here owe a single-minded allegiance to this country, without retaining any allegiance, obligation, or duty to their former state; conversely, Americans who voluntarily acquire foreign naturalization thereafter have but one allegiance, that

foreign country under certain conditions, accepting office in a foreign state to which only nationals of that state are eligible, voting in a foreign political election, war-time desertion, treason, leaving the country to evade military service, and other acts—all result in loss of citizenship. It cannot be supposed that Congress meant, without saying so, that the voluntary doing of these acts would be insufficient for expatriation unless there was also present a conscious desire to give up American citizenship. The voluntary acquisition of foreign nationality through naturalization is on no different plane. Indeed, it is probably the "most obvious and effective form of expatriation," and the most inconsistent with American citizenship.

B. On similar grounds, we believe that petitioner expatriated herself by taking an oath of allegiance to Italy, another act of expatriation listed in both the 1907 and 1940 statutes. Though she now denies that she understood the full purport of the oath, the record supports the conclusion that, at the least, she was aware that she was swearing fealty *to Italy*, and that is enough for loss of American citizenship.

C. Foreign naturalization taking place within this country's territory is effective to incur loss of American nationality. For the contrary view, petitioner relies on the word "in" in the statutory phrase "naturalized *in* any foreign state". But the preposition "in" is obviously used, in this

context, with reference to the state which is the object of the new allegiance—making the phrase equivalent to "naturalized citizen of a foreign state"—and not in the geographical sense of "upon the territory of". The statutory words do not connote the physical presence of the person naturalized on the foreign state's territory at the moment of naturalization. This has been the long-standing administrative construction, and it is indisputably confirmed by the explicit terms of the 1940 Act.

II

A. Petitioner acquired Italian citizenship in 1940. Section 2 of the Act of March 2, 1907, was in effect at that time. This section made foreign naturalization an act of expatriation without any express requirement that foreign residence follow in order for expatriation to result. Under the influence of early views that expatriation could not be effected without abandonment of residence in the country of former allegiance—views expressed before there was any legislation on expatriation and when the very power of a citizen to expatriate himself was considered a doubtful question—the State Department construed this section, in its administrative rulings, as impliedly requiring foreign residence before foreign naturalization could ripen into expatriation. But the plain terms of the Act, and the rationale of *Mackenzie v. Hare*, 239 U. S. 299, indicate that this construc-

tion was erroneous. That case construed the cognate provisions of Section 3 of the 1907 Act—declaring that an American woman who married a foreigner expatriated herself—as applying to women who never left this country. The court below correctly concluded, on the authority of the *Mackenzie* case, and from the unqualified language of Section 2, that foreign residence was not a necessary condition of expatriation by foreign naturalization. Accordingly, petitioner lost her American citizenship immediately upon acquiring Italian citizenship, before she ever went abroad.

B. But even if the establishment of foreign residence was required as a condition of expatriation under the 1907 Act (as it now is under the express terms of the Nationality Act of 1940), petitioner satisfied this condition. She went abroad to live with her husband in July 1941. If she thereby established foreign residence, her expatriation was complete. This consummation of expatriation may be considered as occurring either under Section 2 of the 1907 Act, or under the 1940 Act. Section 2 of the 1907 statute was repealed by the 1940 Act (which superseded the expatriation provisions of the earlier Act) in January, 1941, prior to petitioner's going abroad, but the saving clause of the 1940 Act preserved the former legislation sufficiently to cover this situation. Alternatively, considering the 1940 Act alone, petitioner's Italian naturalization may be treated as a status, which,

though acquired before the effective date of the 1940 Act, continued beyond that date and ripened into expatriation under that statute upon her taking up of a foreign residence after the Act took effect.

C. Petitioner established foreign residence within the meaning of the expatriation laws. Though the District Court found that she did not intend to live in Italy permanently, both the express definition of foreign residence in the applicable statutes and the legislative history of the 1940 Act clearly indicate that an intent to take up a permanent residence abroad is not necessary to establish foreign residence within the intendment of the expatriation provisions. "Residence" for this purpose means nothing more than "the place of general abode" or "principal dwelling place." Italy was clearly petitioner's place of residence in this sense for more than four years beginning in July of 1941.

ARGUMENT

Petitioner admits, and the District Court found, that for reasons of her own she voluntarily and intentionally became a naturalized citizen of Italy in 1940, and thereafter went to live in that country. She desired to, and knew that she had, become an Italian subject. Since 1907, Congress has declared that an American citizen loses his nationality when he obtains naturalization in a foreign state, or takes an oath of allegiance to another nation.

Petitioner maintains, however, that before expatriation can result another condition—unstated in the statutes—must be fulfilled, in addition to the knowing and intentional acquisition of a foreign nationality. She urges that the American citizen must also subjectively intend to renounce and abandon his American nationality, and that a desire to retain both the old and the new citizenship will defeat expatriation. We are very dubious of the claim that petitioner never intended to renounce her American citizenship, and did not believe or suspect that her Italian naturalization would endanger or affect that citizenship,[10] but the

[10] The fact that her application for Italian citizenship, the oath of allegiance to Italy, and the express renunciation of American citizenship, which she admittedly signed, were in the Italian language, which she did not then understand, loses much of its significance when it is recalled that she was a mature young woman of 25, a college graduate, contemplating marriage to an Italian diplomat, and that her fiancé was well aware of the nature of the documents signed by her. Even her professed complete ignorance of Italian in 1940 is rendered doubtful by her admission that she understood the substance of the telephonic advice, "in Italian," from the Italian Consulate in Chicago, in November 1940, to the effect that the royal consent to her marriage "had finally come through" (*supra*, p. 12). In addition, the cumulative effect of the admitted facts (1) that in February 1941 she signed a document, in English, stating her "present nationality" to be "Italian" and her "previous nationality" to be "American", (2) that she traveled to and returned from Italy on Italian diplomatic passports (even taking full account of the reasons she assigned for this mode of travel), and (3) that she made no effort to clarify her citizenship status with State Department authorities in this country from the date of her arrival in Italy until the outbreak of war, notwithstanding that she "presumed" such action was possible during this six-month period (*supra*,

District Court has so found and, in this Court, we shall assume that to be the fact. We fully agree, nevertheless, with the Court of Appeals that "when an American citizen voluntarily acts in a manner inconsistent with his American citizenship by becoming a naturalized citizen of another country, his expatriation results, regardless of his subjective intent" (R. 91). It is also our view that a naturalization effected in this country incurs loss of nationality, and that the taking up of foreign residence was not necessary to consummate expatriation under the 1907 Act, which was in effect in 1940; but if foreign residence was required then, as it is now, the residence petitioner took up in Italy in 1941 was sufficient.

I

Voluntarily acquired foreign naturalization results in loss of American nationality, whether or not this consequence is intended or known by the naturalized person

Congress, in the plainest words, both in Section 2 of the Act of March 2, 1907, and in Section 401(a) of the Nationality Act of 1940, has declared that an American citizen who becomes a naturalized citi-

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pp. 8-9, 13-14, 14-15), cast grave doubt on the *bona fides* of her basic claim that she never suspected that by any of her acts she was endangering her status as an American citizen.

It is to be noted that the Court of Appeals did not affirm, though it did not overturn, the District Court's findings as to petitioner's understanding and intent.

zen of a foreign state expatriates himself by this voluntary act and loses his American nationality.[11] That significant act in itself constitutes overt action gravely inconsistent with American citizenship, and it is immaterial that the newly naturalized person may not subjectively intend to renounce allegiance to this country or to relinquish American citizenship, or that he may mistakenly believe that it is possible to retain American nationality while acquiring a new citizenship. These beliefs in no way alter the definitive character, or the wholly voluntary nature, of the *acts* which Congress has prescribed as sufficient to effect expatriation. Congress has not added, as a condition of expatriation, any requirement of personal, knowing, intended abandonment of American citizenship; and the terms, history, and theory of the expatria-

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[11] There is no distinction, except in unessential wording, between § 2 of the 1907 Act and § 401 of the 1940 Act (which superseded the 1907 Act as of January 13, 1941) with respect to foreign naturalization as an act of expatriation resulting in loss of citizenship. The 1907 statute provided that "any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state" (*supra*, p. 3). The 1940 Act prescribes that an American national "shall lose his nationality by (a) Obtaining naturalization in a foreign state * * * or (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state * * *" (*supra*, p. 4).

(The 1940 Act did enlarge the statutory acts of expatriation, and (in § 403(a)) generally made the loss of nationality conditional upon the taking up of foreign residence. *Supra*, pp. 4-5; *infra*, pp. 41-2, 52.)

The United States and Italy have never entered into a naturalization treaty.

tion statutes show that it would be wrong to imply that extra unexpressed condition.

A. *Intentional acquisition of a foreign nationality through naturalization is sufficient for expatriation* [11a]

1. *The American doctrine of expatriation:* The United States is the nation which, above all others, has traditionally insisted upon the individual's right to expatriate himself, to throw off a former nationality and acquire a new one without retaining any allegiance or obligation to his former state.[12] Since we are a nation of immigrants,

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[11a] Petitioner's brief does not distinguish clearly between (a) obtaining naturalization in a foreign state, and (b) taking an oath of allegiance to a foreign state. They are separate acts of expatriation under both the 1907 and the 1940 Acts. Regardless of whether petitioner took an oath of allegiance to Italy (as to which, see *supra*, pp. 7-8, 12-13, *infra*, pp. 47-9), there is no doubt that she sought and secured Italian citizenship, through naturalization, and that she became a naturalized Italian citizen. *Supra*, pp. 7, 11, 12-13, 15-16.

[12] The Act of July 27, 1868, 15 Stat. 223, Rev. Stat. § 1999, 8 U. S. C. 800, gave legislative recognition to the "right of expatriation" as a "natural and inherent right of all people," but did not define what constituted expatriation. Until the 1907 Act was adopted, there was no Congressional measure prescribing any specific mode in which expatriation could be effected.

The development of the American doctrine of expatriation, with its vicissitudes before the 1850's, is described in 3 Moore, *Digest of International Law*, secs. 431-469; 3 Hackworth, *Digest of International Law*, secs. 242-250; 2 Hyde, *International Law* (1945 ed.), secs. 376-387A; Moore, *The Principles of American Diplomacy*, ch. VII, reprinted in IV *Collected Papers of John Bassett Moore*, pp. 388-406; Flournoy, *Naturalization and Expatriation* (1922) 31 Yale L. J. 702, 848; Brief for the Petitioners, pp. 20-27, in *Perkins* v. *Elg*, October Term, 1938, No. 454.

our chief interest has been to secure from other countries recognition of the single status of our naturalized citizens as Americans, freed from all legal ties, duties, or allegiance to the states of their original nationality, and concerned solely with their duties and allegiance to the United States. But it has been a necessary corollary of our theory and our practice, that we will not keep as American nationals those of our own citizens who voluntarily become citizens of another country. This coordinate principle of the American doctrine of expatriation derives not only from this nation's acceptance of the individual's right to expatriate himself, but equally from our moral obligation to other nations, and from our firm desire to protect the undivided character of our citizenship.

Foreign naturalization has long been regarded as the characteristic mode of expatriating oneself (cf. *The Charming Betsy*, 2 Cranch 64, 120; 9 Op. Atty. Gen. 356, 358-359; 14 Op. Atty. Gen. 295, 297), and during the 19th century, especially after 1868, the Executive consistently affirmed that Americans who voluntarily secured naturalization in another country lost their native nationality. 14 Op. Atty. Gen. 295; 3 Moore, *Digest of International Law* (1906), Sections 440, 466, pp. 583, 584, 712, 713, 714; Van Dyne, *Citizenship of the United States*, p. 272.

It was presumed, of course, that foreign naturalization normally meant intentional abandonment

of American nationality, but, more importantly, the free acquisition of a new citizenship—with its new demands, obligations, allegiance, and possibilities of conflict—is basically adverse to the single-minded political allegiance to the United States, on the part of all citizens, which has historically been our goal. Almost from the very beginning, we have required aliens seeking American citizenship expressly "to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever" (Act of January 29, 1795, 1 Stat. 414), and, conversely, it has been our principle that adult Americans, who wish to remain citizens, should not dilute or stultify their allegiance by voluntarily seeking another and inconsistent citizenship. The developed American doctrine of expatriation—for our own citizens as well as others—necessarily holds that one who freely acquires a new nationality thereafter has but one allegiance—that of his adopted country.[13] In this way, the United States has served its own interest

[13] See 3 Moore, *Digest of International Law* (1906), pp. 518-519; Moore, *American Diplomacy* (1905), p. 192; Moore, *The Principles of American Diplomacy* (1918), reprinted in *IV Collected Papers of John Bassett Moore*. p. 400; 1 Hyde, *International Law* (1922 ed.), sec. 379, pp. 664-666; 2 Hyde, *op. cit.* (1945 ed.), sec. 379, pp. 1148-1149; *Report Proposing a Revision and Codification of the Nationality Laws of the United States, Prepared at the Request of the President of the United States, by the Secretary of State, the Attorney General, and the Secretary of Labor*, 1938, printed in Hearings before the Committee on Immigration and Naturalization, House of Representatives. 76th Congress, 1st Session, on H. R. 6127, at p. 489; 3 Hackworth, *Digest of International Law*, Sec. 242, p. 162.

in maintaining undivided allegiance from all citizens, both native-born and naturalized, and at the same time has fulfilled an obligation to other countries, from whom we have demanded recognition of the complete expatriation of their nationals by naturalization here, and has sought to avoid international difficulties over the nationality of individuals.[14]

2. *Purpose and background of the 1907 Act:* When Congress came, in 1907, after many suggestions for legislation, to deal partially with the subject of expatriation, it declared flatly that foreign naturalization, or the taking of a foreign oath of allegiance, effects loss of American nationality. *Supra,* pp. 3, 28. There was no suggestion, in the statute's wording or history, that expatriation would not result if the American national desired to retain his domestic citizenship along with the new nationality; and such a position would have conflicted with at least a half-century of common understanding and crystallized governmental policy. There had long been no place for the conception of a

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[14] The twentieth-century American climate of opinion on this matter, in Congress and outside, may be gauged by the severe criticism accorded the German citizenship law of 1913, which permitted Germans acquiring foreign nationality to retain their original nationality if the German authorities consented. See 56 Cong. Rec. 5148-5150, 6010-6011, 6095-6; Flournoy, *Observations on the New German Law of Nationality* (1914) 8 Am. Jour. Int. Law 477; D. J. Hill, *Dual Citizenship in the German Imperial and State Citizenship Law* (1918) 12 Am. Jour. Int. Law 356; Maguire, *Naturalization of Aliens* (1918) 32 Harv. L. Rev. 160, 163, 166.

voluntarily-acquired dual nationality for adults. *Supra*, pp. 29-32. The Citizenship Board of 1906,[15] which proposed this provision of the act, clearly intended to apply to American citizens the same principle of singleness of allegiance which had for many decades been enforced against applicants for naturalization as Americans. H. Doc. No. 326, 59th Cong., 2d Sess., p. 23. "No man," the Board said, "should be permitted deliberately to place himself in a position where his services may be claimed by more than one government and his allegiance be due to more than one." [16]

3. *Interpretations of the 1907 Act:* The Department of State has applied the statute in this sense, holding that an adult's voluntary foreign naturalization effects loss of American nationality, regardless of subjective intent or knowledge of the consequences. See 3 Hackworth, *Digest of International Law*, Sec. 243, pp. 208 (cases of Finch and Wormser), 209, 211 (case of McCarten), 212-214,

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[15] The Board was appointed by Secretary of State Root, pursuant to a suggestion from the House Committee on Foreign Affairs, and consisted of Solicitor James Brown Scott and other State Department officials. The 1907 statute was largely based on its recommendations. See H. Rept. Nos. 4784, 59th Cong., 1st Sess., and 6431, 59th Cong., 2d Sess., p. 1. The Congressional committee reports, and the floor debates on the measure, do not deal with the portion of Section 2 involved here. H. Rept. 6431 and S. Rept. No. 7299, 59th Cong., 2d Sess.; 41 Cong. Rec. 1463-1467, 4107, 4116, 4263-4264.

[16] The Board considered its proposals, which eventuated in Section 2, as recommendations for "declaratory legislation." H. Doc. No. 326, *supra*, pp. 2-3.

215; see also the instances cited in Sec. 244 on "Oaths of Allegiance to Foreign States." "

And in the one case in which this Court has adjudicated a comparable problem, it applied the related provisions of Section 3 of the 1907 Act—"That any American woman who marries a foreigner shall take the nationality of her husband"—to a native-born woman who strenuously insisted that she was, and always had been, an American, and had not intended to abandon that citizenship when she married her British husband. *Mackenzie* v. *Hare*, 239 U. S. 299. Referring to the claim of the plaintiff in that case that "No act of the legislature can denationalize a citizen without his concurrence," the Court said (pp. 310-312), "It will thus be seen that plaintiff's contention is in exact antagonism to the statute. Only voluntary expatriation, as she

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[17] Of course, where an act declared by law to result in loss of citizenship is done through duress or compulsion (*Doreau* v. *Marshall*, 170 F. 2d 721 (C. A. 3); *Dos Reis* v. *Nicolls*, 161 F. 2d 860 (C.A. 1); *Acheson* v. *Murakami* (C.A. 9), No. 12,082, decided August 26, 1949; *Schioler* v. *United States*, 75 F. Supp. 353, 355 (N. D. Ill.); *In re Gogal*, 75 F. Supp. 268, 271 (W. D. Pa.); *Yuichi Inouye* v. *Clark*, 73 F. Supp. 1000, 1003 (S. D. Cal.); *United States ex rel. Fracassi* v. *Karnuth*, 19 F. Supp. 581 (W. D. N. Y.); cf. *Dubonnet* v. *Marshall*, 80 F. Supp. 905 (D. C.)), or by a person of unsound mind (*McCampbell* v. *McCampbell*, 13 F. Supp. 847, 849 (W. D. Ky.)), or in other comparable circumstances, expatriation does not result because of the lack of voluntariness in the act. Similarly, the acquisition of foreign naturalization by a minor, derivatively through his parents, lacks voluntary character. *Perkins* v. *Elg*, 307 U. S. 325, 342-343; *infra*, pp. 37-8. In the *Doreau* case, *supra*, at 724, the Third Circuit carefully distinguished "the forsaking of American citizenship, even in a difficult situation, as a matter of expediency" from an act of expatriation done in true duress. See also fn. 19a, *infra*, p. 38.

defines it, can divest a woman of her citizenship, she declares; the statute provides that by marriage with a foreigner she takes his nationality. * * * It may be conceded that a change of citizenship cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen. The law in controversy does not have that feature. It deals with a condition voluntarily entered into, with notice of the consequences." The "notice of the consequences" referred, of course, to that presumptive notice of the law without which a legal society cannot function, not to *de facto* awareness.[18]

In *Ex parte Griffin*, 237 Fed. 445 (N. D. N. Y.), a case similar to this, except that the act of expatriation relied on was solely the taking of an oath of foreign allegiance, the court adopted the same view. Referring to Section 2 of the 1907 Act, the court said (p. 453):

> This language is definite, certain, and unequivocal. Concede that a sovereign cannot discharge a subject from his allegiance and arbitrarily deprive him of his citizenship *against his consent*, except as a punishment for crime, and that Congress cannot abridge

[18] Section 3, and the *Mackenzie* case, also demonstrate that the 1907 Act, as a whole, did not contemplate dual nationality. Specifically providing for resumption of American citizenship on termination of the marital relation, Section 3 plainly shows, on its face, that an American woman who married an alien lost her American nationality, and did not merely gain an additional citizenship. The same principle forbids retention of American nationality when foreign naturalization has been voluntarily obtained.

of their newly adopted country. These twin principles have their source in our national acceptance of the universal right to expatriate oneself, linked with a firm desire to protect the undivided character of our citizenship, as well as with a recognition of our moral obligation to other nations from whom we insist on acknowledgement of the conclusiveness of American naturalization, and a strong will to avoid international conflict over nationality issues.

In passing the 1907 statute, the Congress was following this traditional policy, especially as formulated for it by the Citizenship Board of 1906, which recommended the legislation. Voluntarily-acquired dual nationality for adults was not countenanced by the Board, or the then climate of opinion, or the accepted American doctrine of expatriation. Accordingly, it would plainly conflict not only with the statute's words but with the common understanding of the times to read it as permitting an American to retain his American nationality while consciously and deliberately securing naturalization in another country.

The Department of State has consistently interpreted the statute in this light, holding that the voluntary act of obtaining foreign naturalization is decisive, and a possible subjective desire to keep American citizenship immaterial. Similarly, this Court has construed a related section of the 1907 Act, providing that an American woman who married a foreigner took his nationality, as expatriat-

ing an American citizen who strenuously insisted on her intention to remain an American. *Mackenzie* v. *Hare*, 239 U. S. 299. Congress itself has recognized the automatic and objective operation of the acts of expatriation designated by the 1907 Act by passing special legislation permitting soldiers who expatriated themselves in World War I by taking foreign oaths of allegiance to reacquire American citizenship in short-form manner. On the other hand, there is neither authority nor principle to support petitioner's contrary contention that the 1907 statute contemplated the intentional acquisition by an adult of dual nationality. *Perkins* v. *Elg*, 307 U. S. 325, held only that a child did not expatriate herself through the foreign naturalization of her father during her minority. Other cases cited by petitioner turn wholly upon the fact that an act of expatriation was done under duress or compulsion.

With respect to the obtaining of foreign naturalization or the taking of a foreign oath of allegiance, the Nationality Act of 1940 continued the basic rules of the 1907 Act, and the later Act's history makes it doubly clear that the dominant "principle of singleness of allegiance" was still being rigorously followed. Moreover, the 1940 Act increased the list of acts of expatriation, and these expanded provisions show that a subjective intent to abandon American nationality is not a prerequisite of loss of nationality. Thus, swearing allegiance to a foreign power, entering the armed services of a

or enlarge the rights of citizens * * *; still the right of a citizen to expatriate himself exists * * * and the sovereign power, through Congress, may declare that the doing of certain acts, inconsistent with citizenship in the United States, shall constitute expatriation—loss of or renunciation of citizenship [citing *Mackenzie* v. *Hare*, 239 U. S. 299]. Congress having declared that naturalization in a foreign country, *or the taking of the oath of allegiance to a foreign government*, is expatriation, that the one doing the act "shall be deemed to have expatriated himself," it follows that such act, if voluntarily done, constitutes loss and abandonment and voluntary renunciation of citizenship in the United States. If not so, the statute is meaningless and worthless, and Congress is powerless to declare what acts constitute expatriation. Every citizen is presumed to know the law and to understand the effect of his voluntary acts. When he voluntarily does the acts which the law says operate as expatriation, we have the necessary assent [again citing *Mackenzie* v. *Hare*, *supra*]. [Italics in the original.] [19]

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[19] See also *Reynolds* v. *Haskins*, 8 F. 2d 473 (C.A. 8); *Bauer* v. *Clark*, 161 F. 2d 397, 404-5 (C.A. 7), certiorari denied, 332 U. S. 839; *United States ex rel. Rojak* v. *Marshall*, 34 F. 2d 219 (W. D. Pa.); *United States ex rel. De Cicco* v. *Longo*, 46 F. Supp. 170, 174 (D. Conn.); *United States ex rel. Wrona* v. *Karnuth*, 14 F. Supp. 770 (W. D. N. Y.).

1 Hyde, *International Law* (1922 ed.), Sec. 382, p. 670, says that Section 2 of the 1907 Act makes "no mention * * * of the voluntary aspect of the change of allegiance." 2 Hyde, *op. cit.* (1945 ed.) makes the same comment on Sec. 401(a) of the 1940 Act.

During World War I, Congress itself recognized that the mere taking of a foreign oath of allegiance was enough, without more, to effect expatriation under the 1907 Act. In order to permit the repatriation of the many Americans who joined allied armies while this country was still at peace, and took the oaths of allegiance which were required for enlistment—frequently without any intent or desire to abandon their American nationality—Congress passed two statutes in 1917 and 1918, authorizing special short-form modes of reacquiring American citizenship. It was expressly recognized that these men had definitely expatriated themselves under the 1907 Act, and were no longer citizens. Act of October 5, 1917, 40 Stat. 340, repealed and modified by the Act of May 9, 1918, 40 Stat. 542, 546; see 55 Cong. Rec. 6935, 7665-6 (on 1917 Act), and S. Rept. No. 388, 65th Cong., 2d Sess., pp. 7-8, H. Rept. No. 532, 65th Cong., 2d Sess., pp. 3-4, 56 Cong. Rec. 6008-9, 6011-12 (on 1918 Act).

Perkins v. *Elg*, 307 U. S. 325, 334, 342-349—upon which the District Court (R. 63) and petitioner (Pet. Br. 24-5, 29) mainly rest—suggests nothing to the contrary. Chief Justice Hughes' opinion did define expatriation as "the voluntary renunciation or abandonment of nationality and allegiance" (307 U. S. at 334). It is clear from the context, however, that the Court did not intend by this definition to intimate that the voluntary doing of an act, inconsistent with citizenship and the allegiance it implies, and declared by law to have the consequence

of lost nationality, would nevertheless be immune from that consequence if *de facto* awareness, or a subjective desire to abandon American citizenship, were lacking. The issue in the *Elg* case was, in essence, whether a *child* could expatriate herself. "[Expatriation] has no application," said the Court, immediately following the above-quoted definition of that term, "to the removal from this country of a native citizen during minority. In such a case the voluntary action which is of the essence of the right of expatriation is lacking." Voluntary action "cannot be attributed to an infant whose removal to another country is beyond his control and who during minority is incapable of a binding choice." 307 U. S. at 334; see also p. 343. If the *Elg* case were authority for the view that a mature citizen could under no circumstances lose his citizenship unless he intended and desired that specific result, or at least unless he were fully aware that such result would follow from some voluntary act, it would be in direct conflict with *Mackenzie* v. *Hare, supra,* and flatly opposed to the accepted American doctrine of expatriation, as well as to the history and terms of both the 1907 and 1940 statutes. Clearly, the case has no such implications.[19a]

[19a] *Dos Reis ex rel. Camara* v. *Nicolls*, 161 F. 2d 860 (C.A. 1), *In re Gogal*, 75 F. Supp. 268 (W.D. Pa.), and *Schioler* v. *United States*, 75 F. Supp. 353 (N.D. Ill.)— on which petitioner also relies (Br. 10, 26-28)—are likewise clearly distinguishable. These cases turned wholly upon the element of compulsion and duress; in each instance, the court found that a foreign oath had been taken, or a foreign naturalization obtained, *involuntarily and under duress*, and for this reason no loss

4. *Purpose and background of the 1940 Act:* In 1938, the President transmitted to Congress a Report on the Revision and Codification of the Nationality Laws of the United States, prepared at his request by the Secretaries of State and Labor, and the Attorney General, together with a proposed nationality code.[20] In its chapter on loss of nationality, the proposed code prescribed that expatriation resulted from obtaining naturalization in a foreign state or taking an oath or other formal declaration of allegiance to a foreign state, and the sponsoring Cabinet committee made it clear that these provisions were merely a restatement of the rules of Section 2 of the 1907 Act, as well as of this country's historic policy. They were based, the sponsors said, "upon the principle of singleness of allegiance," and followed from the Government's obligation "to recognize the naturalization of citizens

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of American nationality resulted. The opinions repeatedly make it quite plain that this was the basis of those decisions, and, in addition, they recognize that the voluntary doing of an act prescribed by Congress as an act of expatriation is sufficient. There is no hint of an additional requirement of subjective intention to abandon American nationality. See 161 F. 2d at 861, 862, 863-66, 868; 75 F. Supp. at 271; 75 F. Supp. at 354, 355. As the Third Circuit recently remarked in another duress case, one must carefully distinguish "the forsaking of American citizenship, even in a difficult situation, as a matter of expediency"—petitioner's case, at best—from an act of expatriation done in true duress. *Doreau* v. *Marshall*, 170 F. 2d 721, 724 (C.A. 3). For other duress and compulsion cases, see fn. 17, *supra*, p. 34.

[20] This Report and the proposed code are printed in the Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st Sess., on H. R. 6127, pp. 405, *et seq.* The matter had been under special study in the three departments since April 1933. Exec. Order No. 6115, dated April 25, 1933.

of the United States in foreign countries as having the effect of terminating their American nationality and allegiance." Hearings, *supra*, pp. 489-490 (See *supra*, pp. 29-33). The committee also recommended a series of statutory provisions prescribing additional modes of expatriation, pointing out that "loss of nationality is in all cases to result from the *existence of stated facts.*" (Italics supplied) Hearings, *supra*, pp. 408, 490, *et seq.* Nowhere in the report or in the comments on the proposed code is there any intimation that a subjective intent to retain American nationality defeats the expatriation of one who has performed a statutory act of expatriation or fulfilled one of the stated factual conditions.

The proposed nationality code formed the framework of the Nationality Act of 1940, which adopted most of its suggestions on loss of nationality. Hearings, *supra;* H. Rept. Nos. 2396 and 3019, 76th Cong., 3d Sess., S. Rept. No. 2150, 76th Cong., 3d Sess.; 86 Cong. Rec. 11939-11965, 12817-12818, 13244-13250, 13183. Discussion of the provisions on expatriation was limited, but there was no word of disagreement with the sponsoring committee's stress on the traditional principle of singleness of allegiance and its view that expatriation should result from the existence of stated *facts* and defined *acts.* On the contrary, debate in the House emphasized Congressional antipathy to dual allegiance, and the necessity of a definite election, by word or

act, between conflicting nationalities obtained automatically by birth or during minority. 86 Cong. Rec. 13246-13248, 13250 (Cong. Rees, chief sponsor of the measure).

5. *Terms of the 1940 Act:* The expanded expatriation provisions of the 1940 Act (*supra*, pp. 4-5, 28, fn. 11) prove, in themselves, that an intent to abandon American citizenship, or actual awareness that American citizenship will be lost if certain acts are performed, are not preconditions of loss of nationality.[21] Congress has declared, for example, in §401(b) of the 1940 Act (as in §2 of the 1907 Act) that a person shall lose his nationality by "Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state." If an American citizen takes such an oath, or makes such an affirmation, intentionally and voluntarily, and knowing its nature, may he be heard to say, in a subsequent proceeding to establish his retention of American citizenship, that he always intended to keep his original nationality, or that he was unaware at the time that loss of that citizenship was a legally imposed consequence of his act?[22] Or suppose that an American citizen freely enters

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[21] Section 408 of the Act, 54 Stat. 1171, 8 U.S.C. 808, provides that "The loss of nationality under this Act shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this Act."

[22] To be distinguished, of course, from the situation posed in the text is one in which (as in this case, according to petitioner's present contention) the person is actually unaware that he is taking or signing an oath or is ignorant of its nature. *Infra*, pp. 47-9.

the armed forces of a foreign state whose nationality he has (*i.e.*, by dual citizenship) or thereby acquires under the laws of that state, there being no American law expressly authorizing such foreign military service by a citizen. Under § 401(c), such a person loses his American nationality, and it is plain that a plea of ignorance or of intent to remain an American should not avail him. Similarly, as to the other acts of expatriation defined in the 1940 Act—accepting office in a foreign state to which only nationals of such state are eligible (§ 401(d)); voting in a political election in a foreign state (§ 401(e)); desertion in time of war, if convicted by court-martial (§ 401(g)); committing treason against, attempting by force to overthrow, or bearing arms against the United States, if duly convicted (§ 401(h)); departing the country to avoid military service (§ 401(j)).[23] Cf. *Lapides* v. *Clark*, C.A.D.C., on petition for a writ of certiorari, this Term, No. 284.

The obvious congressional intent that the voluntary doing of these acts shall result in loss of citizenship cannot be defeated by proof, satisfactory

[23] To this list might be added the marriage of an American woman to an alien, which, under § 3 of the 1907 Act (repealed by the Cable Act, the Act of September 22, 1922, c. 411, § 7, 42 Stat. 1022), entailed automatic loss of her citizenship, subject to restoration, under specified conditions, on termination of the marital relation. *Mackenzie* v. *Hare*, 239 U. S. 299, as we have already pointed out (*supra*, pp. 34-5) applied this provision to an American woman who vigorously asserted that she had never intended to give up her American citizenship.

Deserters were deprived of the "rights of citizenship"—before the enactment of the 1940 Act—by Rev. Stats. §§ 1996-1997.

to a judge in a declaratory judgment proceeding, that the doer of the acts was unaware of their legal consequence, or never desired to divest himself of American citizenship. To the performance of these acts—all gravely inconsistent with the retention of American citizenship—Congress has attached the legal consequence of loss of that citizenship. They are made *per se* acts of expatriation, and do not require any knowing renunciation of allegiance. Indeed, if the District Court's holding (R. 63-64) that a subjective intention to give up American allegiance is an essential requirement of expatriation were correct, there hardly would have been any point to the inclusion in the 1940 Act of any mode of expatriation other than the formal renunciation of citizenship (§ 401(f) and (i), *supra*, pp. 4-5), which was obviously never intended by Congress to be the exclusive means of loss of nationality.[24]

[24] It might, perhaps, be argued that the loss of citizenship resulting from conviction of war-time desertion, treason, attempting the violent overthrow of the Government, etc. (§ 401(g), (h), and (j)) is essentially penal in nature, and that the acts which cause loss of citizenship in such cases are not comparable to those acts which entail loss of citizenship, not as a punishment for crime, but because, though lawful, they are inconsistent with the retention of citizenship. But the loss of citizenship resulting from desertion, treason, and other types of criminal activity specified in these subsections, though doubtless in a sense in the nature of a forfeiture for crime, is clearly something more than that. It is a fitting and reasonable consequence, imposed by law, of activity which, apart from its criminal aspects, is inconsistent with that complete allegiance to the nation which citizenship essentially implies. See *supra*, pp. 29-32.

Furthermore, these examples indicate the great difficulties in the administration and operation of the expatriation statutes which would necessarily arise if petitioner's subjective test were adopted. Loss of nationality would then depend, not upon a definite fact or condition explicitly set down by Congress and easily ascertainable by court or administrator, but upon an internal state of mind which would largely be evidenced by self-serving declarations. There is grave doubt whether the expatriation provisions would be truly workable under this construction.

If, as we have shown, Congress has declared that the doing of such acts as swearing allegiance to a foreign state, entering the armed forces of a foreign state, voting in a foreign state, marrying a citizen of a foreign state, etc., results in expatriation and loss of citizenship without regard to actual (as distinguished from presumptive) knowledge of this consequence or desire to abandon American nationality, *a fortiori*, a mature adult citizen who voluntarily and intentionally applies for and accepts citizenship in a foreign state expatriates himself, whatever his motive and desires, and irrespective of actual unawareness of this consequence of his deliberate act. For naturalization in a foreign state is the "most obvious and effective form of expatriation," and perhaps the most inconsistent with American citizenship. Cf. Van Dyne, *Citizenship of the United States*, p. 272; *Naturalization in the United States*, p. 337; 3 Moore, *Inter-*

national Law, p. 712; 14 Op. Atty. Gen. 295, 297, *supra*, pp. 30-3.[25]

6. *Conclusion:* The development and theory of the American doctrine of expatriation, the history and terms of the 1907 and 1940 Acts, and the accepted construction of these statutes, all demonstrate that Congress has not made the intentional and knowing renunciation of American citizenship a condition of expatriation through acquisition of foreign nationality by naturalization. The voluntary and intentional obtaining of foreign naturali-

[25] The *amicus curiae* Revedin suggests that the decision below somehow conflicts with *Knauer* v. *United States*, 328 U. S. 654 (Br. in support of petition, pp. 5-6; Br. on the merits, pp. 6-7). The argument may be that, since petitioner took Italian naturalization without intending truly to forswear allegiance to this country, and to be a loyal citizen of Italy, her Italian naturalization is so tainted with fraud as to be susceptible of revocation. We submit, however, that whether petitioner's Italian naturalization is or is not cancelable for fraud in the procurement is a matter that exclusively concerns the Italian Government, and one into which American courts have no duty or right to inquire. The admitted fact is that petitioner knowingly applied for and received Italian citizenship for reasons satisfactory to her, and she thereby lost her American citizenship under our expatriation laws; the possible revocability of her Italian citizenship is not germane to any issue of this case.

Petitioner, on the other hand, seems to feel that the *Knauer* denaturalization rule somehow requires taking account, from this country's point of view, of her subjective intentions in securing Italian naturalization (Br. 25). *Knauer* simply holds that an applicant for American citizenship who falsely takes the oath forswearing foreign allegiance—which is specifically required of all applicants for American naturalization (328 U. S. at 657; *supra*, p. 31) may be denaturalized for fraud in procuring his naturalization. But the case has no bearing on the *expatriation of American citizens*, for, unlike naturalization (328 U. S. at 671-2), Congress, as our argument is intended to show, has not made it a condition of expatriation that the American national forswear his allegiance to this country. And Congress has had good reasons for making this distinction. *Supra*, pp. 29-33, 39-44.

zation suffices, and nothing turns upon the expatriate's subjective intent to remain an American.

It follows that the District Court erred in basing its decision on the fact that petitioner "did not intend at the time she signed the documents in question to divest herself of her American citizenship" (R. 64), and that, conversely, the Court of Appeals was right in holding that when an American national voluntarily becomes a naturalized citizen of another country, his expatriation results, under the statutes, regardless of whether he knowingly renounces or relinquishes American citizenship (R. 91).[26] And on this phase of the case, petitioner has no other recourse. By familiar principles, the nature of her "motive" for obtaining Italian naturalization—to enable her prospective husband to obtain the royal consent to his marriage which Italian law required—is utterly irrelevant. The same is true, of course, of any general claim founded on the assumed—but unlikely—fact that she did not know that her intentional and voluntary act would result in expatriation. The elementary rule, common to both criminal and civil law, that persons living in a legal society are, necessarily, presumed to know the law—which is but another way of saying that ignorance of the law is "no excuse"—would negative such a contention.

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[26] There can be no question that Congress is constitutionally empowered to enact expatriation legislation of this type. *Mackenzie* v. *Hare*, 239 U. S. 299 (*supra*, pp. 34-5, 42); *United States* v. *Wong Kim Ark*, 169 U. S. 649, 704; *Reynolds* v. *Haskins*, 8 F. 2d 473, 475 (C. A. 8).

The heart of the matter is this: Unlike the plaintiff in *Perkins* v. *Elg*, 307 U. S. 325, whose asserted foreign nationality was derivatively acquired during minority by the naturalization of her parents in Sweden, petitioner is an adult who intentionally undertook to acquire Italian nationality for reasons of her own. The most that can be said is that while her acts were conscious, deliberate, and voluntary, their consequences were unexpected and repugnant. Those consequences, however, are imposed by statute, for very good reason, upon the acts which petitioner performed, and these acts do not depend for their effectiveness upon her knowledge of, or willingness to assume, the necessary consequences.

B. *Petitioner's taking of an oath of allegiance to Italy also effected her expatriation.*

We have not stressed the petitioner's signing of an oath of allegiance to Italy (with which was linked a formal renunciation of her American citizenship)—the second act of expatriation defined in Section 2 of the 1907 Act (*supra*, p. 3) and Section 401 (b) of the 1940 Act (*supra*, p. 4)—because petitioner now suggests that she did not know she was taking an oath of allegiance (Pet. 24; Br. 16). The District Court did find that petitioner, in signing the oath, "had no intention whatsoever of renouncing her allegiance to this country" (R. 66), and this would indicate a lack of appreciation on her part of the portion of the oath renouncing

American citizenship (R. 49). But the trial court did not find, as petitioner asserts (Pet. 24; Br. 16), that she did not know she was taking an oath of allegiance *to Italy*, which is all that our expatriation statutes prescribe. The court found no more than that the oath was in Italian, which she did not understand (R. 65), and that no formalities attended the signing (R. 66). But it is highly improbable that a college-educated young woman of 25 (R. 9, 12), who knew that she had applied for Italian citizenship and that the document she was signing was connected with acquiring the new nationality, did not understand that she was swearing to be faithful to "H. M. the King of Italy and Albania, Emperor of Ethiopia" (R. 20, 49). See also fn. 6, *supra*, pp. 7-8.

As for the minor claim that certain formalities were lacking in the taking of the oath, the fact is that the document, regular on its face, was duly signed before the witnesses whose signatures appear thereon, and that no formalities were required under Italian law (R. 44-45, 49-50). The Board of Immigration Appeals case which petitioner cites (Br. 8, 18) rests on the fact that under Canadian law the oath had to be formally taken, as well as subscribed to in writing, and the American citizen there involved subscribed to the oath but never formally took it. *In the Matter of E——*, 1 I. & N. Decisions 548, 550. There is no showing of a similar Italian requirement, and there was no finding that lack of formality nullified the oath.

If petitioner knew that she was taking an oath of allegiance *to Italy*, as is probable, she voluntarily committed another act of expatriation under the 1907 Act, and the argument of this Point applies with redoubled force. See fn. 11a, *supra*, p. 29.

C. *Foreign naturalization within this country is effective.*

1. Section 2 of the 1907 Act uses the language "* * * when he has been naturalized *in* any foreign state," and Section 401(a) of the 1940 Act similarly speaks of "Obtaining naturalization *in* a foreign state * * *" (italics supplied). In this Court, for the first time, petitioner advances the argument that the 1907 Act requires that the operative act of naturalization must take place in a foreign country, and since she was physically present in the United States at the time of her Italian naturalization, she could never be expatriated (Pet. 8, 19-20).[27] But the preposition "in" in the statutory words "naturalized in any foreign state" (on which petitioner relies) is obviously used, in this context, with reference to the state which is the object of the new allegiance—making the phrase equivalent to "naturalized citizen of a foreign state"—and not in the geographical sense of "upon the territory of". (See 6 Oxford English Dict., letter "N", p. 39 for similar use of "naturalized in".) The statutory words do not connote the physical

[27] In her brief in the Court of Appeals, petitioner stated that this was a point she might have proffered, but had not (p. 14).

presence of the person naturalized on the foreign state's territory at the moment of naturalization. Otherwise, an American citizen who acquired foreign citizenship while within the United States, as petitioner admittedly did, and thereafter left the United States with intent never to return, would nevertheless continue indefinitely to remain an American citizen under our law. That plainly erroneous construction of these statutes is at war with the clear purpose of Congress to expatriate Americans who voluntarily assume foreign nationality (*supra*, pp. 29-33), and cannot be reconciled with Section 403(a) of the 1940 Act, which specifically recognizes that the different acts of expatriation listed in Section 401—including "obtaining naturalization *in* a foreign state"—may occur in this country, and provides that when such is the case, nationality is not lost until foreign residence is established.[28]

The 1940 Act thus confirms the meaning of the prior statute's phrase, "naturalized *in* any foreign state." We also show below as an additional argument, (*infra*, pp. 60-61) that petitioner effectively

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[28] Section 403(a) provides:

> Except as provided for in subsections (g), (h), and (i) of section 401, no national can expatriate himself, or be expatriated, under this section while within the United States or any of its outlying possessions, but expatriation shall result from the performance within the United States or any of its outlying possessions of any of the acts or the fulfillment of any of the conditions specified in this section if and when the national thereafter takes up a residence abroad.

See fn. 4, *supra*, p. 5.

expatriated herself under the 1940 Act (which expressly sanctions the effectiveness of foreign naturalization on American soil), without regard to the 1907 Act.

2. Moreover, the 1907 Act also specifies the taking of a foreign oath of allegiance as resulting in expatriation, without the slightest linguistic basis for the argument that an oath taken in this country is ineffective. *Supra*, p. 3. If petitioner knowingly took such an oath, as we suggest above (*supra*, pp. 47-49), that act also effected her expatriation.

3. The Department of State has construed the 1907 statute as contemplating the naturalization of a person in accordance with the laws of a foreign state, or the taking of a foreign oath of allegiance, while on United States soil. 3 Hackworth, *Digest of International Law*, Sec. 245, pp. 231-235. In accordance with its view that foreign residence was essential to consummate expatriation under the 1907 Act (a position which we discuss in Point II, *infra*), it has held that naturalization within this country (or the taking of an oath) would become inoperative unless followed by residence abroad, but it likewise has held that a person who had obtained foreign naturalization or who had taken an oath of foreign allegiance in this country would lose his American nationality upon taking up residence in the foreign state in which naturalization was secured or to which allegiance was sworn. *Ibid.* The foreign naturalization or the taking of the oath do not lose their effect because they occur on our territory.

Thus, petitioner's argument is opposed by consistent administrative practice, and *Petition of Prack*, 60 F. 2d 171 (W. D. Pa.), the only judicial decision cited (Pet. 8, 20; Br. 12) does not hold or suggest that an act of naturalization, or oath of allegiance, is ineffective if the applicant is within the United States.

II

The taking up of foreign residence was not necessary to effect expatriation in 1940; but even if the taking up of such residence was required under the law at that time, the requirement was met in this case

Petitioner became a citizen of Italy in 1940, and went to Italy to live with her husband in July of 1941. Between these two dates, on January 13, 1941, Section 2 of the Act of March 2, 1907, was repealed and superseded by Sections 401 and 403(a) of the Nationality Act of 1940 (*supra*, pp. 4-5). Under the 1907 Act, which was the law in effect when petitioner obtained Italian naturalization, the obtaining of foreign naturalization resulted in immediate expatriation, without any requirement of foreign residence. At least nothing in the 1907 Act expressly so required. However, under the 1940 Act—the present law and the law in effect when petitioner went to Italy—the obtaining of foreign naturalization results in expatriation (§ 401(a)), only "if and when," by express terms of the Act, "the national thereafter takes up a residence abroad" (§ 403(a)). *Supra*, p. 5.

Petitioner contends (1) that, though Section 2 of

the 1907 Act did not in terms require an American citizen who obtained foreign naturalization to establish foreign residence in order to expatriate himself, it must be construed as though it did so require; (2) that, since she did not leave this country prior to January 13, 1941 (the effective date of the repeal of this section of the 1907 Act) she could not have lost her citizenship under that Act; (3) that, though she went to Italy to live in July 1941, she could not thereby have expatriated herself under the 1940 Act (then in effect) because her acquisition of foreign naturalization—an essential step in the process of expatriation under that Act—occurred in 1940, before the Act's effective date; (4) that the residence she established in Italy was not, in any event, a foreign residence within the meaning of the expatriation provisions of either Act; and that, consequently, under no hypothesis can she be said to have lost her American nationality. We submit that the Court of Appeals' answer to these contentions, based on alternative grounds, (see *supra,* p. 18), is clearly correct.

A. As to the contention that the taking up of foreign residence must be read into the expatriation provisions of Section 2 of the 1907 Act as an implied condition of effective expatriation, it is true that in *Talbot* v. *Jansen,* 3 Dall. 133, 152-154, 161-165 (1795)—decided long before Congress declared expatriation to be "a natural and inherent right of all people" (Act of July 27, 1868, c. 249, 15 Stat. 223; 8 U.S.C. 800; see fn. 12, *supra,* p. 29), and at a time when the very existence of such a

right was "by no means a settled question in this country" (3 Dall. at 133, ed. note 1; and see *Shanks* v. *DuPont*, 3 Pet. 242, 246)—some of the early justices of this Court expressed the view that, assuming a citizen had it in his power to expatriate himself at all, a condition of the exercise of this right was a change of residence to the country of his new allegiance. And a dictum in *The Santissima Trinidad*, 7 Wheat. 283, 347-348 (1822), states that "Assuming, for the purposes of argument, that an American citizen may, independently of any legislative act to this effect, throw off his own allegiance to his native country, as to which we give no opinion, it is perfectly clear, that this cannot be done without a *bona fide* change of domicil, under circumstances of good faith." To the same effect, see *Comitis* v. *Parkerson*, 56 Fed. 556, 559-561 (E. D. La.); Van Dyne, *Citizenship of the United States*, p. 273.

In the preamble to the Act of July 27, 1868, *supra*, Congress declared, for the first time, that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness." This Act, however, did not define any means by which an American citizen could expatriate himself, the prime purpose of the legislation having been to protect the rights of naturalized American citizens living abroad. The first legislation dealing with the expatriation of American citizens, and stating the conditions under which a citizen would "be deemed to have expatriated him-

self", was the 1907 Act. We have already several times noted that the first paragraph of Section 2 of this Act specified two separate acts of expatriation—the taking of foreign naturalization and swearing allegiance to a foreign state. *Supra*, pp. 27-29, 32-33, 47-49. It said nothing about the establishment of foreign residence or the abandonment of residence in this country as a condition of expatriation. Cf. 1 Hyde, *International Law* (1922 ed.) Sec. 382, p. 670. That the omission was not inadvertent, and that the taking up of foreign residence was not impliedly intended as a condition of expatriation, is strongly indicated by the language of the second paragraph of Section 2 (34 Stat. 1228), immediately following the statement of these two modes of expatriation. That paragraph provided that "When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen * * *: *Provided, however*, That such presumption may be overcome * * *." (See fn. 37, *infra*, pp. 62-3). The specific attention given by Congress to foreign residence in this paragraph, coupled with the omission of any reference to foreign residence in the first paragraph, constitutes persuasive evidence, we think, that the omission in the first paragraph was deliberate.[29]

[29] The Citizenship Board of 1906, which recommended the 1907 legislation (*supra*, pp. 32-3), apparently was of the view that the obtaining of foreign naturalization, or the taking of a foreign oath of allegiance, would be sufficient in

Nevertheless, as observed by the court below (R. 89), the State Department, in its administrative rulings, has interpreted Section 2 of the 1907 Act as though it contained an implied qualification requiring the establishment of a residence abroad before expatriation could become effective. See 3 Hackworth, *Digest of International Law*, pp. 228-231. (The rulings cited are all in the 1930's.) It is clear that the adoption of this construction was in large part in deference to this Court's *dictum* in *The Santissima Trinidad*, quoted at p. 54, *supra*, and to the decision in *Comitis* v. *Parkerson*, *supra*, p. 54.[30] See 3 Hackworth, *op. cit.*, p. 230.

Despite this administrative interpretation of Section 2 of the 1907 Act, we think the court below correctly concluded (R. 89-90), both from the unqualified language of the section, and on the authority of *Mackenzie* v. *Hare*, 239 U. S. 299, that the taking up of foreign residence was not essential under the 1907 Act to effect expatria-

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themselves to effect expatriation under its proposed legislation, for it also recommended that the statute provide for expatriation when an American citizen (native-born or naturalized) became domiciled in a foreign state—five years' foreign residence being presumptive evidence of domicile. H. Doc. No. 326, 59th Cong., 2d Sess., p. 23. The Congress followed this latter suggestion only with regard to naturalized citizens, and then in a different form, but it did accept the Board's first recommendation as to foreign naturalization and the taking of a foreign oath of allegiance. *Supra*, pp. 32-3. Act of March 2, 1907, Sec. 2, first paragraph, 34 Stat. 1228.

[30] *Comitis* v. *Parkerson* held, in 1893, that an American woman who married a foreigner and continued to reside in this country did not expatriate herself. It is contrary to the holding in *Mackenzie* v. *Hare*, 239 U. S. 299, *infra*, which interpreted the later 1907 Act otherwise.

tion. In the *Mackenzie* case, this Court read Section 3 of the 1907 Act (providing that any American woman who married a foreigner lost her American nationality and assumed that of her husband) as applying to American women who married aliens in this country and never departed from its jurisdiction. See *supra*, pp. 34-5.[31] The Court rejected the contention that the section applied only to American women who married abroad or who went abroad after their marriage, observing (239 U. S. at 307-308):

> * * * There is no limitation of place; there is no limitation of effect, the marital relation having been constituted and continuing. * * * It would transcend judicial power to insert limitations or conditions upon disputable considerations of reasons which impelled the law, or of conditions to which it might be conjectured it was addressed and intended to accommodate.

The reasons which impelled this construction of Section 3 of the 1907 Act apply with equal cogency to Section 2. Like Section 3, Section 2 lacks any qualifying language limiting its application to cases where the person involved goes abroad following the act which is declared to result in loss of citizenship. If anything, there is less reason,

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[31] Section 4 of the 1907 Act, 34 Stat. 1229, also provided that a foreign woman acquiring American citizenship by marriage to an American could, after termination of the marital relation, make formal renunciation of American nationality in an American court, even though she continued to reside here.

we think, for injecting such an implied qualification into Section 2 than into Section 3. For, obtaining naturalization in, or swearing allegiance to, a foreign state is manifestly a clearer act of expatriation than merely marrying an alien.[32] See *supra*, pp. 30-3, 44-5.

If we are correct in our contention that expatriation was possible under Section 2 of the 1907 Act without subsequent foreign residence, then petitioner lost her citizenship immediately upon obtaining Italian citizenship, prior to her departure for Italy in 1941.[33] But even if we are wrong in this, we submit that she completed the process of her expatriation when she went to Italy to live in July 1941, as the court below decided in an alternative holding.

B. Assuming for the moment that when petitioner went to Italy in July 1941 she thereby took

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[32] The State Department distinguished the *Mackenzie* case on the ground that the woman's citizenship became, under the provisions of the statute, merged in that of her husband, regardless of their residence, and that therefore the case "was essentially different from that of an individual who, while remaining in the United States, attempts to subject himself to the sovereignty of a foreign state, through the taking of an oath of allegiance thereto." 3 Hackworth, *op cit. supra*, at p. 231. The suggested difference, however, does not seem to us sufficient to support the distinction drawn. And the *Mackenzie* opinion is based, not so much on the merger of a married woman's nationality, as on the express words of the Act and the absence of any explicit foreign residence requirement. 239 U. S. at 307-8.

[33] The statement of the Acting Commissioner of Immigration and Naturalization, to which petitioner refers at Br. 4, and 28, and R. 2, concerned this issue of whether foreign residence was required for expatriation under the 1907 Act.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 709

ROSETTE SORGE SAVORGNAN,
Petitioner,

against

THE UNITED STATES OF AMERICA, TOM C. CLARK, the Attorney General for the United States of America and WATSON B. MILLER, Commissioner of Immigration and Naturalization Service,

Respondents.

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Opinions Below

Circuit Court—*Savorgnan* v. *United States of America, et al.*, 171 F. 2nd 155 (C. A. 7, 1948). (R. 86).

District Court—*Savorgnan* v. *United States of America, et al.*, 73 F. Supp. 109 (D. C. W. D. Wis. 1947).

up "foreign residence,"[34] the Court of Appeals was right in holding that this completed the process of her expatriation. As the court recognized (R. 90-1), this consummation of expatriation may be considered as occurring under either the 1907 Act or the 1940 Act:

1. Although Section 2 of the 1907 Act (superseded by the 1940 Act on January 13, 1941) had been repealed by the time petitioner went abroad in July 1941, the saving clause of the 1940 Act plainly sufficed to preserve the earlier legislation to cover her subsequent acquisition of foreign residence. That clause provides (§ 347(a), 54 Stat. 1168; 8 U. S. C. 747(a)) that "Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed * * * to affect * * * any act, thing, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such * * * acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect."[35] Petitioner's acquisition of Italian citizenship in 1940 was an "act" within the meaning of this saving clause. Consequently, as stated by the court below (R. 90), "the provisions of Section 2 of the 1907 statute

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[34] See subpoint C, *infra*, pp. 61-4, for the argument that petitioner's stay in Italy did constitute residence abroad for expatriation purposes.

[35] Chapter V ("Miscellaneous") of the 1940 Act contained the repeal provisions.

would continue to govern the legal consequences of [her] naturalization in a foreign state which occurred before the effective date of the Nationality Act of 1940, although [her] change to a foreign residence did not take place until after that date."

2. Alternatively, petitioner effectively expatriated herself under the 1940 Act—there being no necessity, on this theory, to invoke the 1907 Act at all. The 1940 Act provides for loss of American nationality by "obtaining naturalization in a foreign state" (§ 401(a)) "if and when the national thereafter takes up a residence abroad" (§ 403(a)). The Court of Appeals was correct in holding (R. 91) that naturalization creates a "status," and that once naturalization is obtained the resulting citizenship persists and is not terminated except by the process of denaturalization. Cf. *Perkins* v. *Elg*, 307 U. S. 325, 329. Petitioner's acquisition of Italian citizenship, even though occurring prior to the effective date of the 1940 Act, endowed her with a status which fulfilled one of the specific conditions of the 1940 Act, and this status ripened into expatriation when she took up residence abroad, after the new Act became effective. Cf. *Petition of Prack*, 60 F. 2d 171, 172 (W. D. Pa.); *Petition of Peterson*, 33 F. Supp. 615, 616 (E. D. Wash.); *In re Varat*, 1 F. Supp. 898 (E. D. N. Y.); 39 Op. Atty. Gen. 474 (foreign naturalization during wartime effective at termination of the war). The words of the 1940 statute do not require the acquisition of foreign naturalization to have

Jurisdiction

The jurisdiction of this Court is invoked under Section 1254 of the Judicial Code as amended. 28 U. S. C. §1254.

Preliminary Statement

In July, 1947, several months prior to the District Court decision in the instant case, the *amicus curiae* commenced an action in the United States District Court for the Southern District of New York against the Secretary of the Treasury of the United States (for whom the Secretary of State was later substituted) and the United States Trust Company of New York for a declaratory judgment declaring that plaintiff in that case, Margaret Trimble Revedin, is now and at all times since birth has been, a citizen of the United States of America. That action, which is still pending, involves questions of fact and of law substantially identical with the questions involved in the case sought now to be brought before this Court. Accordingly, the decision of this Court herein will be of vital consequence in the determination of the action for declaratory judgment commenced by the *amicus curiae*. The *amicus curiae* concurs in the petitioner's statement of the instant case and supports the petition for a writ of certiorari.

Summary of Argument

The decision of the United States Court of Appeals for the Seventh Circuit in the instant case deals with perhaps the most important single right of any American today—his right to United States nationality. That decision, if not reversed, will establish the principle that a United States national shall lose his nationality if his

taken place after the statute's effective date, and a sensible view of its language and purpose requires that it cover the case of one who, like petitioner, having obtained naturalization as a citizen of a foreign state prior to the enactment of the Nationality Act, continues in that status until and after the legislation's effective date and then takes up foreign residence.

3. Unless the 1940 Act's saving clause is held to preserve the 1907 Act sufficiently to cover this situation, as we argue above (*supra*, pp. 56-60), or the 1940 Act itself governs, as we have just urged, there would be no statutory provision for expatriation—assuming that foreign residence is essential—covering the situation in which naturalization preceded, and departure followed, the effective date of the 1940 legislation. Manifestly, Congress never meant that there should be any such hiatus in the law. In view of the similarity between the foreign-naturalization (and the foreign-oath-taking) provisions of the two statutes, it is highly unlikely that any period of non-coverage was intended.

C. Finally, petitioner's contention that she did not, in any event, ever take up residence abroad so as to consummate her expatriation (Br. 20-23) has no merit. The District Court found, it is true, that when she left for Italy in July 1941 she did not intend to establish a permanent residence abroad or to abandon her residence in the United States (R. 65). But it is undisputed that she departed in order to reside with her husband, who was a mem-

acts fall technically within the ambit of applicable federal statutes governing expatriation* without regard to whether he understands the import of such statutes or the nature or consequences of his acts and without regard to the intentions or considerations motivating such acts. The *amicus curiae* contends that the principle thus enunciated by the Circuit Court decision is entirely inconsistent with prior pronouncements of this Court and is squarely in conflict with a recent decision of the United States Court of Appeals for the Third Circuit.

ARGUMENT

POINT I

The decision of the Court of Appeals in this case is in conflict with applicable decisions and pronouncements of this Court.

The District Court in the instant case made, among others, the following findings of fact (R. 64-67):

1. That plaintiff was a native born American;

2. That on or about August 1, 1940, at St. Louis, Missouri, at the suggestion of her then intended husband, Alessandro Savorgnan, plaintiff applied through the Italian Consulate at Chicago, Illinois, for Italian citizenship, and on November 23, 1940, at Chicago, Illinois, plaintiff,

* The statutes involved in the instant case are the Act of March 2, 1907 (34 Stat. 1228), (8 U.S.C. 16, 17) and Nationality Act of 1940 (October 14, 1940, c. 876, Title I, Subchap. IV, 54 Stat. 1168), (8 U.S.C. 801, *et seq.*). The petitioner and respondent herein are in disagreement as to which statute governs the disposition of the instant case. In the view which the *amicus curiae* takes of the matter, it is unimportant which statute governs. The pertinent parts of the statutes are set forth in the petitioner's brief.

ber of the Italian diplomatic service and was being compelled to leave this country; that her stay abroad was for an indefinite period of time; that there then existed a serious deterioration of relations between Italy and the United States which verged upon and shortly thereafter materialized into war; and that her husband served in the Italian foreign office during the war. (R. 27, 34-35, 65, 92). *Supra*, pp. 8-9, 14-15. In short, petitioner was married to an Italian diplomat and evidently desired to reside with him in Italy or wherever he might serve (cf. R. 34).[36]

The Court of Appeals properly held that these facts show that petitioner took up a foreign residence within the requirement of Section 403 (a) of the 1940 Act, as well as any similar requirement of Section 2 of the 1907 Act (R. 92). "Residence," as used in the phrase "residence abroad" in Section 403 (a) of the 1940 Act, is specifically defined in that Act (§ 104, 54 Stat. 1138; 8 U.S.C. 504) as meaning "the place of general abode" (*supra*, p. 6). This is also the meaning given to the word in the second paragraph of Section 2 of the 1907 Act (34 Stat. 1228), dealing with the presumption of loss of citizenship by naturalized American citizens after specified periods of foreign residence[37]; in fact the definition contained

[36] At the time of the trial in the District Court, petitioner was apparently with her husband, who was at that time the First Secretary of the Italian Legation in Venezuela (R. 8, 35, 56). See fn. 8, *supra*, p. 14.

[37] This paragraph provides:

> When any naturalized citizen shall have resided for two years in the foreign state from which he came, or

at the request of said Savorgnan signed an Oath of Allegiance to the Italian government;

3. The application was made solely for the purpose of obtaining consent from the Italian government to plaintiff's marriage to Savorgnan who was, at the time, in the Diplomatic Service of Italy and located in this country;

4. The application and oath were both written in Italian, which language plaintiff could not, at that time, read, write or understand;

5. Plaintiff assumed that the signing of the documents was but a step in obtaining consent of the Italian government to her marriage;

6. Plaintiff married Savorgnan on December 26, 1940, at Waukon, Iowa;

7. At the time plaintiff signed the application for Italian citizenship and the Oath of Allegiance:

(a) She did so without any formal proceedings;

(b) She relied on her husband's statement and assurance that, by signing the documents, she merely acquired a technical Italian citizenship which status would, in no way, endanger her American citizenship;

(c) She had no present or fixed intention in her mind of renouncing her allegiance to this country and, in fact, never did intend to divest herself of American citizenship;

8. The plaintiff did not knowingly renounce or relinquish her American citizenship.

After reciting the substance of these findings and after adverting to the pronouncements of this Court in *Perkins* v. *Elg*, 307 U. S. 325 (1939), the District Court concluded

in this paragraph was the source of the definition adopted in Section 403 (a) of the 1940 Act (see footnote 38, *infra*). This term—"place of general abode"—was intended to connote neither permanence of residence nor domicile in the strict sense, but simply "principal dwelling place."[38] The District Court held that the residence requirement was unsatisfied only because it erroneously thought that "*permanent* residence abroad" was necessary (R. 62, 64, 65). It did not hold or find that petitioner did not make Italy her principal dwelling place in July, 1941. And it is hardly doubtful that petitioner's principal dwelling place

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for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and *the place of his general abode shall be deemed his place of residence* during said years: *Provided, however,* That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe: *And provided also,* That no American citizen shall be allowed to expatriate himself when this country is at war (Italics supplied).

[38] See the Cabinet sponsors' note to Section 104 of the bill which became the Nationality Act of 1940 (*supra*, pp. 39-40) (Hearings before the Committee on Immigration and Naturalization, H. of Reps., 76th Cong., 1st Sess., on H.R. 6127, p. 417):

"Definitions of 'residence' frequently include the element of intent as to the future place of abode. However, in section 104 hereof [defining "residence" as used in § 403 (a) and elsewhere] *no mention is made of intent, and the actual 'place of general abode' is the sole test for determining residence.* The words 'place of general abode,' which are taken from the second paragraph of section 2 of the Citizenship Act of March 2, 1907 (34 Stat. 1228), seem to speak for themselves. *They relate to the principal dwelling place of a person*" [italics supplied].

In contrast, Section 308 of the 1940 Act (54 Stat. 1143; 8 U.S.C. 708) uses the term "permanent residence."

that expatriation was a "matter of intent", that knowledge is necessary to intent, that plaintiff did not "knowingly renounce or relinquish her American citizenship" and that she was, therefore, entitled to judgment "declaring her to be an American citizen" (73 F. Supp. at p. 111).

Without questioning the District Court's findings of fact, the Court of Appeals reversed, holding that subjective intention, misinformation as to the legal consequences of her acts and motives for her conduct had no bearing at all on the question—the sole question being whether she intended to act as she did. Judge Swygert, writing for the Court of Appeals, stated:

> "If these factors were permitted consideration, the operation of the statute would depend not upon the voluntarily performed act of becoming naturalized in a foreign state, but upon the extent of the legal knowledge and the subjective intention or motivation of the person involved. Such tests cannot be used to determine the operation of the statute." (171 F. (2nd) at p. 159).

Why such tests cannot be used to determine the operation of this statute, the Court of Appeals did not say. In reviewing denaturalization proceedings this Court has found no such incapacity. Thus in *Knauer* v. *U. S.*, 328 U. S. 654 (1946) this Court affirmed the decision of the District Court, cancelling the petitioner's certificate of naturalization, in spite of the fact that the naturalization statutes had been technically complied with, on concurring in a finding that the petitioner (a former native of Germany) had taken his oath of allegiance to the United States without the subjective intention of foreswearing his allegiance to his land of birth. In the instant case, surely petitioner, a native-born national, is entitled to an equally thorough and complete examination and con-

after she left the United States in 1941 was Italy (*supra*, pp. 8-9, 14-15, 61-2). That constitutes foreign residence for expatriation purposes under either statute.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.[39]

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OCTOBER 1949.

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[39] In any event, the United States is not a proper party defendant, and the action should be dismissed against it, as the Court of Appeals held (R. 92), since it has not consented to be sued under section 503 of the Nationality Act of 1940, 8 U.S.C. 903, *infra*, pp. 65-66, or under the Federal Declaratory Judgments Act, 28 U.S.C. 2201. See R. 3, 6.

sideration of her subjective intent and motivation. It is not reasonable to assume that what an alien must "intend" to acquire, a native-born national may lose regardless of his "intent". The *amicus curiae* contends that the expatriation statutes, dealing as they do with the precious right of nationality, cannot be applied to the acts of a national without due regard to all attendant circumstances, including his motivation and intention, and his understanding of the consequences of his acts. Failure to accord due weight to these elements runs counter to the spirit of the *Knauer* case and to the decision of this Court in *Perkins* v. *Elg, supra,* wherein Chief Justice Hughes stated that expatriation is "the voluntary renunciation or abandonment of nationality and allegiance" and wherein he cautioned that "rights of citizenship are not to be destroyed by an ambiguity." (307 U. S. at pp. 334, 337)

POINT II

The decision of the Court of Appeals in this case is in conflict with a recent decision of the United States Court of Appeals for the Third Circuit.

A further reason for granting the petition for certiorari herein is that the decision of the Court of Appeals in the instant case is squarely in conflict with the recent decision of the United States Court of Appeals for the Third Circuit in the case of *Doreau* v. *Marshall,* 170 F. 2nd 721 (C. A. 3, 1948).

In the *Doreau* case the complaint alleged that plaintiff, a native-born American, in 1933 married a citizen of France. In 1939, she last left the United States and was residing with her husband in France at the time of the

APPENDIX

1. Section 503 of the Nationality Act of 1940, 54 Stat. 1171, 8 U. S. C. 903, provides:

> If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence for a judgment declaring him to be a national of the United States. If such person is outside the United States and shall have instituted such an action in court, he may, upon submission of a sworn application showing that the claim of nationality presented in such action is made in good faith and has a substantial basis, obtain from a diplomatic or consular officer of the United States in the foreign country in which he is residing a certificate of identity stating that his nationality status is pending before the court, and may be admitted to the United States with such certificate upon the condition that he shall be subject to deportation in case it shall be decided by the court that he is not a national of the United States. Such certificate of identity shall not be denied solely on the ground that such person has lost a status previously had

occupation of that country by the Germans in June, 1940. In January of 1941, she was advised by the American Consul at Paris that, in the likely event of war between the United States and Germany, she would run the risk of internment in a concentration camp. In the summer of 1941, while still in France, she became ill and pregnant and was advised that should she be interned, the consequences to her and to her unborn child might be fatal. Because of all these things, in accordance with the suggestions made, she applied for a Certificate of French Nationality. She allegedly did not read the application nor was it read to her and she had no knowledge of its contents. On September 8, 1941, she was issued such Certificate. The complaint further alleged that plaintiff "had no voluntary intention of renouncing her American nationality and only applied for French nationality under such circumstances as amounted to duress and believing that upon the conclusion of hostilities her war time act would be considered a nullity." The District Court dismissed the complaint. The Court of Appeals, by divided Court, reversed and sent the case back for trial.

Mr. Justice O'Connell, dissenting, took a view quite similar to that taken by the Court of Appeals in the instant case, saying:

> "I think the statute here in question could and did proclaim the expatriation of appellant by virtue of her voluntary application for, and acceptance of, Vichy nationality in preference to returning to the United States or remaining subject to the same risks as the thousands of other United States nationals abroad. * * *" (170 F. 2nd at p. 725)

The majority, however, after reviewing a number of authorities, concluded:

or acquired as a national of the United States; and from any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing the reasons for his decision. The Secretary of State, with approval of the Attorney General, shall prescribe rules and regulations for the issuance of certificates of identity as above provided.

2. In full text, Section 401 (a) of the Nationality Act of 1940, 54 Stat. 1168, 8 U. S. C. 801, provides:

A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

(a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: *Provided, however,* That nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States: *Provided further,* That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of his [sic] Act to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an

> "We think the rationale of the above decisions is sound. If by reason of extraordinary circumstances amounting to true duress, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is not authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. *He cannot be truly said to be manifesting an intention of renouncing his country.* * * *" (170 F. 2nd at p. 724) (Italics ours.)

In both the *Doreau* case and the instant case plaintiffs' acts were acts which, under a strict technical interpretation of the expatriation statutes, might be said to result in a loss of nationality. Such a strict technical interpretation has been adopted by the Seventh Circuit in the instant case. In refusing to consider the knowledge, motives or intent of the petitioner that Court has held that certain acts performed by her in the belief that such acts would not endanger her United States nationality and without any intention of foreswearing her primary allegiance to the United States, were sufficient to result in her expatriation. The United States Court of Appeals for the Third Circuit has refused to accord such a strict interpretation to the Nationality Act of 1940, *supra*. That Court in the *Doreau* case, *supra*, adopting the more reasonable position that the extreme penalty of expatriation should be limited to those cases where there is evidence of voluntary and intentional renunciation of allegiance to this country in favor of allegiance to a foreign state, examined fully into the motives and intentions of the petitioner in that case and found a voluntary and intentional renunciation lacking.

American citizen. Failure on the part of such person to so return and take up permanent residence in the United States during such period shall be deemed to be a determination on the part of such person to discontinue his status as an American citizen, and such person shall be forever estopped by such failure from thereafter claiming such American citizenship; * * *.

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There has thus been created a direct conflict on this very important matter between decisions of the Third and Seventh Circuits which, the *amicus curiae* respectfully submits, should be resolved by this Court.

CONCLUSION

The writ of certiorari should be granted.

Respectfully submitted,

WALBRIDGE S. TAFT,
Attorney for Margaret Trimble Revedin, amicus curiae.

JACQUELIN A. SWORDS,
MORRIS D. CRAWFORD, JR.,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] '49

No. [redacted] 48

ROSETTE SORGE SAVORGNAN,
Petitioner,

against

THE UNITED STATES OF AMERICA, TOM C. CLARK, the Attorney General for the United States of America and WATSON B. MILLER, Commissioner of Immigration and Naturalization Service,
Respondents.

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Dated: April 27, 1949.

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zen, who has in no way failed in her duties and loyalty to this country, lose her United States citizenship by mistake?

For the purpose of the argument of the *amicus curiae* (although petitioner takes a contrary view), it will be conceded that petitioner performed one of the acts proscribed by applicable federal statutes governing expatriation.* In order to make her marriage to Savorgnan possible, she became an Italian national. However, in view of the findings of the District Court (*supra*), it must likewise be conceded that petitioner, in performing such act, had no intention of renouncing or divesting herself of her United States citizenship and was not aware that such might be the result of her act. On the contrary, relying on her husband's assurances, she proceeded in the belief that she was merely acquiring a technical Italian citizenship which would in no way endanger her United States citizenship.

On this state of facts, the District Court, citing the opinion of this Court in *Perkins* v. *Elg*, 307 U. S. 325 (1939), concluded that expatriation was a "matter of intent", that knowledge is necessary to intent, that petitioner did not "knowingly renounce or relinquish her American citizenship", and that she was, therefore, entitled to judgment "declaring her to be an American citizen".

The Court of Appeals reversed. On this point, the Court, noting that petitioner had voluntarily acquired

* The statutes involved in the case here for review are the Act of March 2, 1907 (34 Stat. 1228), (8 U.S.C.A. 16, 17), and Nationality Act of 1940 (Oct. 14, 1940, Title I, Chap. IV, 54 Stat. 1137, 1168) (8 U.S.C.A. §801, *et seq.*). The petitioner and respondent herein are in disagreement as to which statute governs the instant controversy. In the view which the *amicus curiae* takes, it is unimportant which statute governs. The relevant parts of these statutes are set forth in an appendix hereto.

Italian nationality, held that her subjective intent, misinformation as to the legal consequences of her acts, and motivations for her conduct were immaterial, stating (at p. 159)

> "If these factors were permitted consideration, the operation of the statute would depend not upon the voluntarily performed act of becoming naturalized in a foreign state, but upon the extent of the legal knowledge and the subjective intention or motivation of the person involved. Such tests cannot be used to determine the operation of the statute."

Therein we believe the Court erred. It is our position that in determining the operation of the statute, dealing, as it does, with the basic and precious rights of citizenship, it is not only proper, but imperative, that the Courts give full consideration to such factors.

This is not a case involving a crime or other wrongful act, or the contractual rights of third persons, where the Courts apply the maxim *ignorantia legis neminem excusat. Queen* v. *Mayor, etc. of Tewkesbury*, L. R. 3, Q. B. 629; *Brock* v. *Weiss*, 44 N. J. L. 241 (1882); *Harper* v. *Atlanta and W. P. R. Co.*, 33 Ga. App. 259, 125 S. E. 885 (1924); *Cutler* ads. *State*, 36 N. J. L. 125 (1872). This is a case involving the personal rights of the petitioner alone, her rights to citizenship in the land of her birth. These rights, it is submitted, are not technical ones surrounded by pitfalls into which the unwary may stumble, but rather are natural and fundamental rights which a citizen can not relinquish by inadvertence or mistake or otherwise than by his conscious, voluntary and intentional act of renunciation and abandonment.

If the decision of the Court of Appeals be deemed correct and petitioner be deemed, by her acts, to have relin-

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 48

ROSETTE SORGE SAVORGNAN,
Petitioner,

against

THE UNITED STATES OF AMERICA, J. HOWARD McGRATH, the Attorney General for the United States of America, and WATSON B. MILLER, Commissioner of Immigration and Naturalization Service,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE *AMICUS CURIAE*

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Dated: September 30, 1949.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 48

ROSETTE SORGE SAVORGNAN,

Petitioner,

against

THE UNITED STATES OF AMERICA, J. HOWARD MCGRATH, the Attorney General for the United States of America, and WATSON B. MILLER, Commissioner of Immigration and Naturalization Service,

Respondents.

BRIEF OF THE *AMICUS CURIAE*

Opinions Below

Circuit Court—*Savorgnan* v. *United States of America, et al.*, 171 F. 2nd 155 (C. A. 7, 1948). (R. 86).

District Court—*Savorgnan* v. *United States of America, et al.*, 73 F. Supp. 109 (D. C. W. D. Wis., 1947).

Jurisdiction

Petition for a writ of Certiorari was filed on April 8, 1949, and was granted by this Court on May 31, 1949 (337 U. S. 914). Jurisdiction is invoked under 28 U. S. C. A. §1254.

Preliminary Statement

In July, 1947, several months prior to the District Court's decision in the case here for review, the *amicus curiae* commenced an action in the United States District Court for the Southern District of New York for a judgment declaring plaintiff in that case, Margaret Trimble Revedin, to be a citizen of the United States of America. That action and the case now before this Court for review are factually similar in many respects and involve certain identical questions of law. The decision of this Court herein will, accordingly, be of substantial significance in the final determination of the declaratory judgment action commenced by the *amicus curiae*.

The facts of the case here for review are set forth in some detail in Petitioner's Brief, and will be but briefly summarized here.

Petitioner, a native born American citizen, in 1940 became engaged to one Alessandro Savorgnan, a member of the Italian Diplomatic Corps. In view of his status, however, she was, under the then Fascist laws of Italy, unable to marry him without first becoming an Italian national. Accordingly, she took certain steps to obtain a technical Italian citizenship in order to make her marriage possible, and, in December, 1940 married Savorgnan.

The steps taken were the signing of an application for Italian citizenship and the subsequent signing of an "Oath of Allegiance" to the King of Italy. The application and "Oath" were both written in Italian, which language petitioner could not read, write or understand. She assumed that the signing of these documents was but a formal step necessary in obtaining consent of the Italian government to her marriage.

In connection with the signing of these documents, the District Court found, among others, the following facts (R. 64-67):

(a) "The application was made solely for the purpose of obtaining consent from the Italian government to [petitioner's] marriage to Savorgnan * * *."

(b) "* * * she [signed the documents] without any formal proceedings."

(c) "At the time she signed the documents, she had no intention whatsoever of renouncing her allegiance to this country * * *."

(d) "* * * plaintiff relied on her husband's statement and assurance, that by signing the documents * * * she merely acquired a technical Italian citizenship, which status would in no way endanger her American citizenship."

(e) "At the time she affixed her signature [to the documents], she had no present or fixed intention in her mind of renouncing her allegiance to this country, and in fact never did intend to divest herself of American citizenship."

(f) "That the plaintiff did not knowingly renounce or relinquish her American citizenship."

None of these findings of fact was questioned by the Court of Appeals.

Summary of Argument

The basic question of law common to the case before this Court for review and the action commenced by the *amicus curiae* is: Can a native born United States citi-

quished her citizenship of birth, it will have been an involuntary relinquishment contrary to her intent and due solely to her mistaken understanding of the legal consequences of her acts. In decreeing this result, it is respectfully submitted, the Court of Appeals fell into error.

ARGUMENT

POINT I

Petitioner did not lose her nationality by reason of obtaining naturalization in a foreign state.

As indicated above, the Court of Appeals in the instant case based its decision on the ground that petitioner had voluntarily obtained Italian citizenship and, regardless of intent or motivation, had thereby violated the provisions both of Section 401 (a) of the Nationality Act of 1940 and Section 2 of the Act of March 2, 1907,* whichever statute was applicable. In this conclusion, it is respectfully submitted, the Court was in error.

(A) Subjective Intent Is Deemed Controlling In Interpreting Those Sections of The Federal Statutes Governing Acquisition of Nationality.

In *Knauer* v. *United States*, 328 U. S. 654 (1946), this Court had under review a proceeding for the cancellation of Knauer's Certificate of Naturalization. Knauer, in obtaining citizenship, had fully complied with all the formal and technical requirements of the statute. The government sought revocation of the Certificate fundamentally on the ground that, in taking his Oath of Alle-

* 8 U.S.C.A. §801 (a) and 34 Stat. 1228, respectively.

giance, Knauer had acted with mental reservations and with no intention of forswearing allegiance to his land of birth or of carrying out the obligations of the Oath. The District Court found in favor of the government and entered an order cancelling Knauer's Certificate. The Court of Appeals affirmed. This Court, after an exhaustive review of the evidence bearing on Knauer's intent, concurred in the findings of the District Court and affirmed the decision below.

See, also,

United States v. *Wurzenberger*, 56 F. Supp. 381 (D.C.D. Conn. 1944);

United States v. *Kramer*, 262 Fed. 395 (C.A.A. 5th 1919);

United States v. *Haas*, 51 F. Supp. 910 (D.C. N.D. N.Y. 1943);

United States v. *Claassen*, 56 F. Supp. 71 (D.C.D. Ind. 1944).

In all of these cases, the alien's state of mind was held controlling in determining whether he had acquired American citzenship. Can it be that Congress intended that a citizen's state of mind should be deemed any less important in determining whether he has given up his citizenship? It is submitted (as borne out by the authorities cited in sub-point "B" below) that Congress did not so intend.

(B) The Court Below Stands Alone in Its Rigid Interpretation of The Federal Statutes Governing Expatriation.

After exhaustive search of the authorities, we have been unable to find any other decision comparable to that

of the Court of Appeals in the case here for review in its strict and uncompromising interpretation of Section 401 of the Nationality Act and the earlier Act of March 2, 1907. With the exception of that decision, the Courts have uniformly accorded these Acts a more liberal interpretation in order to effect their manifest intent and purpose.

We cite but a few of the cases. In the unreported case of *Tucciarone* v. *Marshall*, tried in the District Court for the Southern District of New York in November, 1948 (file #40-293), the defendant claimed that plaintiff, a native born United States citizen, had been expatriated, among other reasons, because of her having voted in a political election in Italy on June 2, 1946 in violation of Section 401 of the Nationality Act of 1940.*

In the course of his opinion, Mr. Justice Conger stated:

> "If we apply the words of the statute literally by simply voting at the election, plaintiff lost her nationality. I feel, however, that the statute should be given a more liberal interpretation.
>
> 'To expatriate oneself clearly involves voluntary action. "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance". Perkins *v.* Elg, 307 U. S. 325, 334 59 S. Ct., 884, 83 L. Ed. 1320.' (Dos Reis ex rel Camara *v.* Nicholls, 161 F. (2d) 868.)
>
> "Certainly intention to expatriate is a fact to be proven. I am satisfied from the evidence that plaintiff never intended to expatriate herself when she voted at the election of June 2, 1946. * * * she never knew that there was a law of the United

* Sub-section (e) of that Act provides that expatriation shall result, among other things, from "voting in a political election in a foreign state * * *." 8 U.S.C.A. §801 (e).

> States which forfeited her citzenship if she did vote. * * *. Viewed in the light of the condition and the state of this woman's mind at the time she voted, I can't say that plaintiff, by so voting, renounced and abandoned her American nationality and allegiance."

In *Dorcau* v. *Marshall*, 170 F. 2nd 721 (C.A. 3, 1948), plaintiff, a native born American married to a Frenchman and residing in France with her husband at the time of the German occupation of France, applied for (and received) a certificate of French nationality because she was advised, in the likely event of war between the United States and Germany, that she would run the risk of internment in a concentration camp, the consequences of which might prove fatal to her and her then unborn child. The Court of Appeals, reversing an order of the District Court dismissing the complaint, after reviewing a number of authorities, said at page 724:

> "We think the rationale of the above decisions is sound. If by reason of extraordinary circumstances amounting to true duress, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is not authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. *He cannot be truly said to be manifesting an intention of renouncing his country.*" (Emphasis ours.)

In the case of *Perkins* v. *Elg*, the Court of Appeals for the District of Columbia, 99 F. 2nd 408 (1938), said at page 412:

> "* * * expatriation is a matter of intent on the part of the person concerned, which intent must be shown by some express act or some other act from which it can be gathered."

This Court, in affirming the Court of Appeals, 307 U. S. 325 (1939) by Chief Justice Hughes said at page 334:

> "Expatriation is the voluntary renunciation or abandonment of nationality and allegiance."

and at page 337:

> "Rights of citizenship are not to be destroyed by an ambiguity."

In the case of *Von Moltke* v. *Gillies*, 332 U. S. 708 (1948), this Court had to consider the relinquishment of another (and certainly no more precious) constitutional right—the right to representation by counsel. In considering whether petitioner should be relieved of the consequences of her written waiver of counsel, the Court explored the petitioner's degree of understanding of her acts and said, at page 724:

> "* * * To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter."

and concluded at page 276:

> "The admitted circumstances here cannot support a holding that petitioner intelligently and understandingly waived her right to counsel."

Citizenship in the United States is one of the most precious possessions of a native born American. The legislature, in enacting the Nationality Act of 1940, was careful to preserve the right of any American citizen, who might deliberately choose to do so, to expatriate himself and become naturalized in another country (8 U.S.C.A., §800). It cannot be assumed, however, that the

legislature intended that expatriation should be forced on a citizen who had no desire or intention of renouncing his citizenship simply because he may have unwittingly transgressed one of the technical provisions of the Act.

To paraphrase Chief Justice Hughes in *Perkins* v. *Elg*, *supra*:

> "Rights of citizenship are not to be destroyed by a technicality."

POINT II

Petitioner did not lose her nationality by reason of taking an oath of allegiance to a foreign state.

The Court below did not find it necessary to consider whether petitioner's act, in signing an oath swearing allegiance to the King of Italy, was sufficient to result in her expatriation under Section 401 (b) of the Nationality Act of 1940 or Section 2 of Act of March 2, 1907. However, against the possibility that respondent may, on this review, urge that point as a ground for affirmance, we will briefly consider the argument.

All that petitioner did in the instant case in this connection was to sign a document which contained the words of an Oath of Allegiance to the King of Italy. This document was written in Italian, a language which petitioner could not read and did not understand, and its contents were not explained to her. According to the evidence, the usual formalities of reciting words and raising the hand were not observed. The District Court has found that at the time she signed the document, she had no intention of renouncing her American citizenship and that, relying on Savorgnan's statement and assurances, she believed that her American citizenship was in no way being endangered.

In *O'Reilly* v. *The People of the State of New York*, 86 N. Y. 154 (1881), the New York Court of Appeals, after reviewing at some length the history and development of the law relating to oaths, and, after pointing out the various relaxations that had been made over the years, concluded that the requirement of oral recitation of the oath was not a formality which could be dispensed with. The Court went further and said (at p. 161) that, to constitute a valid oath,

> "* * * there must be in some form, in the presence of an officer authorized to administer it, an unequivocal and present act, by which the affiant consciously takes upon himself the obligation of an oath."

See, also,

> *Bookman* v. *City of New York*, 200 N. Y. 53 (1910), *In the Matter of E, I & N* Decisions, 548 (1943); *In re Gogal*, 75 F. Supp. 268 (1947).

In *Knauer* v. *United States*, *supra*, this Court, in the course of its opinion, stated (at p. 671):

> "It [the oath] relates to a state of mind and is a promise of future conduct. It is the final act by which an alien acquires the status of citizen. It requires foreswearing of allegiance in good faith and with no mental reservations. * * *"

Certainly the mere signing of a document in a foreign language, the contents of which are unknown to the signer, could not be deemed the taking of an oath sufficient to deprive one of his citizenship under Section 401(b) of the Nationality Act of 1940, or under the earlier Act of March 2, 1907.

Conclusion

As recently stated by this Court in the case of *Klapprott v. United States*, 335 U. S. 601 (1949), at page 616:

> "To take away a man's citizenship deprives him of a right no less precious than life or liberty, indeed of one which today comprehends those rights and almost all others."

It seems clear that Congress, in specifying the act of obtaining naturalization in a foreign state as an act resulting in the forfeiture of citizenship, must have conceived of that act not as a mere thoughtless formality, but as an act of real substance—at a minimum, as a positive, voluntary and conscious shifting of loyalties from this nation to another. Certainly, Congress never intended that the casual act of a bride-to-be, aimed solely at the removal of technical barriers to her marriage, and performed in the belief that it would in no way endanger her American citizenship, should result in the harsh penalty of involuntary expatriation.

To answer the question propounded at the outset of this brief, it is respectfully submitted that a native born United States citizen who has in no way failed in her duties and loyalty to this country, cannot lose her United States citizenship by mistake, and that the decision below is erroneous and should be reversed.

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JACQUELIN A. SWORDS,
MORRIS D. CRAWFORD, JR.,
of Counsel.

APPENDIX

Statutes Involved.

Section 2 of the Act of March 2, 1907, (34 Statutes 1228, 8 U.S.C.A., Section 17, 1934 Edition) provides in part as follows:

> "Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state."

Section 401 of the Nationality Act of 1940 (8 U.S.C.A., Section 801) provides in part as follows:

> "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person;
>
> (b) Taking an oath or making an affirmation or other formal declaration to a foreign state * * *."

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 48

ROSETTE SORGE SAVORGNAN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA, ET AL.,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS, AMICUS CURIAE

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SUPREME COURT OF THE UNITED STATES

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Petitioner,

vs.

THE UNITED STATES OF AMERICA, ET AL.,

Respondents

BRIEF FOR ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS, AMICUS CURIAE

Introduction

The Association of Immigration and Nationality Lawyers is a national association of lawyers admitted to practice before the Immigration Service and the Board of Immigration Appeals. Some of its members are former officials of the Immigration Service and the Board of Immigration Appeals.

The Association is interested in advancing the science of the administration of law pertaining to immigration, nationality and naturalization.

We submit this brief and ask leave of the Court to file it as *amicus curiae* because of our interest in the issues involved in the present case.

Statement

Petitioner, a native born American, resided in the United States until July 15, 1941, when she went to Italy with her husband, an Italian diplomat who was ordered to leave the United States. She had no intention of abandoning her United States domicile and she returned here in 1945.

Upon the assurance of her future husband that she would not lose her American citizenship and to obtain consent of the Italian government to the marriage, petitioner applied for and on August 25, 1940, was granted Italian citizenship. On November 23, 1940, she signed an Italian oath of allegiance in the Italian language which she could neither read nor understand. No oath was formally administered.

Argument

Point I

Petitioner was not expatriated under the 1907 Act

Under Section 2 of the Expatriation Act of March 2, 1907, 34 Stat. 1228 expatriation might result from (1) naturalization in a foreign state or (2) the taking of a foreign oath of allegiance.

1. Both expatriation provisions, however, required foreign residence. The basis for this requirement is set forth in an annotation prepared in 1938 by the Secretary of State, the Attorney General and the Secretary of Labor in their report proposing the Nationality Act of 1940. (House Immigration Committee Hearings on H.R. 6127 and H.R. 9980, 76th Congress, First Session, p. 492). There it was stated:

> "Ordinarily departure from the country of which a person has been a national is regarded as an essential element of expatriation (The Santissima Trinidad, 7

Wheat. 283; Talbot *v.* Jansen, 3 Dall. 133; Comitis *v.* Parkerson, 56 Fed. 556, Opinion of Attorney General Cushing, October 31, 1856, 8 Op. Atty. Gen. 139; Opinion of Attorney General Williams, August 20, 1873, 14 Op. Atty. Gen. 295). It is true that the Supreme Court of the United States held in the case of Mackenzie *v.* Hare (239 U. S. 299), that an American woman lost her American nationality under the provision of section 3 of the Act of March 2, 1907 (34 Stat. 1228), 'that any American woman who marries a foreigner shall take the nationality of her husband,' although she had remained in this country. However, this provision was repealed by the Cable Act of September 22, 1922, and as a general rule, it does not seem desirable that American nationals should be able to cast off their American nationality and allegiance while continuing to reside in this country. If such persons should perform acts in the United States which would result in their expatriation if they were beyond the territory and jurisdiction thereof, and if such acts are deemed reprehensible in themselves, the proper course would seem to be to provide adequate penalties, such as fine or imprisonment."

Thus it was the view of the Department of Justice (until it changed its position in the instant case) as well as that of the State Department that departure from the United States was a prerequisite to expatriation prior to the Nationality Act of 1940. That departure was a prerequisite under the 1907 Act is the view expressed by the Nationality Manual of the Immigration Service (1944) pp. 14068-70. This Manual is in the Department of Justice Library and contains the precedents of the Immigration Service which they are required to make public pursuant to 5 U.S.C. 1002(b).

Historically departure from the United States was essential to effectuate expatriation. The parent law of our expatriation statutes—the Virginia Law of 1779—drawn by

Thomas Jefferson required renunciation in open court and departure to effectuate expatriation. *House Document No. 326*, 59th Congress, 2nd Session (1906) p. 27.

Prior to 1907, departure from the United States with intent not to return was considered "the most certain evidence of intention of expatriation." The term "expatriation" was used synonymously with emigration. *House Document No. 326*, 59th Congress, 2nd Session (1906) at pp. 27, 164. See also: *Compilation of Certain Departmental Circulars Relating to Citizenship, Registration of American Citizens*, etc. Dept. of State (1925) at p. 1.

It was in the light of the foregoing concept, that expatriation connoted and required emigration or departure, that the 1907 statute was construed and administratively applied for many years. As noted above in the annotation to the Nationality Act of 1940 the Departments of State and Justice regarded *Mackenzie* v. *Hare* 239 U. S. 299 as an exception to the general rule. We believe that careful analysis of *Mackenzie* v. *Hare* will reveal that this Court merely held that a married woman's citizenship was held in suspension, only during marriage to an alien. This was based on the unity theory of husband and wife. We think that the expatriation which resulted in that case was in fact involuntary and we submit that the theory of that case is inapplicable herein and should not be followed today.

The 1907 Expatriation statute should be strictly construed. *In Matter of Yamamoto*, U. S. District Court (Hawaii), No. 214, 1929, Judge Massee stated with regard to this statute:

> "The statute, section 2, *supra*, being penal in its nature, the act which, in law is deemed to take away the citizenship of birth, must strictly conform to the statute. Citizenship by birth is presumed to continue until expatriation is clearly established. *Hauenstein* v. *Lynham*, 100 U. S. 483."

A strict construction of the statute, viewed in the light of the historical development of expatriation in the United States and considered with due weight given to a consistent administrative interpretation of more than thirty years should result in an interpretation requiring departure from the United States before expatriation can become effective. Since petitioner did not depart from the United States during the period that the 1907 Act was in force, she was not expatriated under its provisions.

2. The petitioner applied for Italian citizenship under the misleading advice of her husband and without intention of abandoning her American citizenship. Expatriation is founded on the doctrine that the individual voluntarily intends to abandon citizenship. *Perkins* v. *Elg*, 307 U. S. 325; *Tsiang*, The Question of Expatriation in America Prior to 1907 (1942). A liberal doctrine of mistake should therefore be applicable herein. Exacting proof of intention to abandon citizenship should be required if expatriation is to be a concept of voluntary action as the word implies. If petitioner did not exercise a free and intelligent choice based upon a correct understanding of the nature of her conduct, expatriation should not follow. Thus in holding that voting in Japan did not result in expatriation Judge Cavanaugh stated in *Arikawa* v. *Acheson*, 83 F. Supp. 473 (1949):

> "The fundamental principle of law is applicable as to influence, mistake and confusion existing which dominated the mind in not acting freely and voluntarily at the time."

We submit that petitioner did not intend to expatriate herself and that the confusion under which she labored precludes a finding of voluntary abandonment of citizenship—the essence of the doctrine of expatriation.

3. Petitioner was not expatriated by signing an oath of

allegiance to Italy. Under the 1907 expatriation statute it was necessary that an oath of allegiance be taken to a foreign power. The 1940 statute permitted expatriation by the "taking of an oath, an affirmation or *other formal declaration* of allegiance to a foreign state." The annotations to 401(b) of the Nationality Act of 1940 (Hearings on H.R. 6127, 9980 *supra* at p. 490) indicate that the oath required by the 1907 Act was not sufficiently broad enough as some states do not recognize an "oath" which usually has a religious connotation. In *Matter of Yamamoto, supra*, it was held that a pledge of allegiance was insufficient under the 1907 statute. Thus, it will be observed that formal conduct was contemplated under that statute to effectuate expatriation.

To sustain a conviction for perjury it is necessary to establish that a formal oath has been administered. *O'Reilly* v. *People*, 86 N.Y. 154. Before the precious rights of citizenship are taken away, it should likewise be established by clear proof that the required formalities have been followed. In the instant case no formal oath was administered and therefore it is not established that petitioner engaged in the formal acts necessary for expatriation.

Point II

The Nationality Act of 1940 is Inapplicable

Petitioner's conduct in applying for Italian citizenship and signing an oath of allegiance occurred prior to the effective date of the Nationality Act of 1940. Nevertheless, the government argues that this Act, 8 U.S.C. 801, has retroactive application. (Government Brief, p. 60).

It is submitted that the Nationality Act of 1940 is prospective in operation. *Shaufus* v. *Attorney General*, 45 F. Supp. 61 (1942); *In re Skoglund*, 46 F. Supp. 434 (1942).

"Were the expatriation sections retroactive, they could not interfere with or disturb the vested rights of citizenship and at the same time be valid under our constitution." *Matter of Alvarado* (Decision of Board of Immigration Appeals, File No. 56158/416, approved by the Attorney General, June 6, 1945).

Section 347 of the Nationality Act of 1940 (8 U.S.C.A. 747) did not preserve the 1907 Act. It has been held that Section 317 did not preserve a mere condition to enable an individual to tack on residence in the United States subsequent to the 1940 Nationality Act in order to complete citizenship. *U. S. ex rel. Aberasturi* v. *Cain*, 147 F. (2d) 449. The position taken in the instant case by the government is directly contrary to the position it is now taking in the Court of Appeals for the District of Columbia in *Bertoldi* v. *Clark* #10224, where it is urging approval of the *Aberasturi* case. In the acquisition of citizenship a liberal construction of the statute is permissible. Certainly, where a strict construction of a statute is required as in the case of an expatriation statute, residence after the 1940 Act can not be tacked on to complete loss of citizenship.

Conclusion

The court has urged the most elaborate safeguards for the protection of citizens in denaturalization proceedings where citizenship is allegedly acquired illegally or fraudulently. See *Baumgartner* v. *United States*, 322 U. S. 665; *Schneiderman* v. *United States*, 320 U. S. 118. Greater safeguards should surround expatriation where there is no taint of illegality of fraud, for expatriation likewise takes away the precious rights of citizenship, a right "no less precious than life, or liberty, indeed one which today comprehends those rights and almost all others." *Klapprott* v. *United States*, 335 U. S. 601, 616.

Before taking away such rights the most exacting proof should be offered that there has been compliance with the applicable statute. The burden is upon the government. It is submitted that in the instant case the government has not established that the petitioner fulfilled the conditions required for expatriation.

Respectfully submitted,

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IN THE

Supreme Court of the United States

No. 48 — October Term, 1949

48

ROSETTE SORGE SAVORGNAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, J. HOWARD McGRATH, THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, and WATSON B. MILLER, COMMISSIONER OF IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petition For Rehearing

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petition For Rehearing

The Opinion of the Supreme Court of the United States in the above entitled cause was delivered on January 9, 1950, and time for filing the within petition was extended by Order of the Honorable Harold H. Burton, Associate Justice of the Supreme Court of the United States, to and including March 1, 1950.

Comes now Rosette Sorge Savorgnan, petitioner in the above entitled cause, and respectfully petitions the Court for a rehearing of this case. In support of her petition for

rehearing, petitioner urges this Court's attention be invited to certain important and determinative points of fact and law in this case.

The vital question presented in this petition for rehearing is this:

> *Did the petitioner take the oath of renouncing her American citizenship and take the oath of allegiance to the King of Italy so as to comply with the conditional grant of the Royal Decree conceding her Italian citizenship.*

I.

THE GRANTING OF ITALIAN CITIZENSHIP WAS NOT ESTABLISHED AND WAS LIKEWISE CONDITIONAL UPON PETITIONER TAKING THE OATH.

This Court on page 3 of the Opinion recited:

> "Insofar as material, the undisputed facts and those found by the District Court are as follows:
>
> "* * * In August, the petitioner was granted Italian citizenship. * * *."

It is respectfully submitted that the granting of Italian citizenship to petitioner is disputed. Likewise there is no finding by the District Court that petitioner was granted Italian citizenship. It is strongly urged that there is nothing in the Record before this Court to establish this assumed fact as found or is it conceded.

Under the pleadings petitioner established she was native born and this is admitted by the Government. Did not the burden shift to the Government to prove her expatriation? The only evidence on this point was a state-

ment by Mr. Savorgnan at folio 81 of the Record that "technically speaking, the Italian citizenship was bestowed upon her when the decree was issued." While Italian law is a question of fact it is nevertheless a question none other than an Italian legal expert is qualified to testify. It would seem unlikely that Mr. Savorgnan's unsupported statement could be construed as an admission on behalf of the petitioner on this point. As to the Decree itself, the Government elected not to produce it nor is it part of the Record. As to its contents, it is purely speculative. While it is true Exhibit 2 refers to a Royal Decree and as therein stated recites the conceding of Italian citizenship in accordance therewith, something more was required of petitioner before its fulfillment and that was of the taking the oath as prescribed in Exhibit 2. This assumed fact of the granting of Italian citizenship was obviously the principal basis of the Court's Opinion and it is therein that petitioner strongly urges reconsideration.

II.

THE APPLICATION BY PETITIONER FOR ITALIAN CITIZENSHIP WAS NOT TANTAMOUNT TO A NATURALIZATION.

The Court in its Opinion on page 5 states:

> "We thus face two principal questions:
>
> "1. What was the effect upon petitioner's American citizenship of her applying for and *obtaining Italian citizenship?* * * *." (Italics ours.)

The question propounded and answered by the Court finding petitioner became a naturalized Italian citizen as-

sumes one of two vital and controlling facts, namely, *"and obtaining Italian citizenship."*

The Record is clear that petitioner sought and applied for Italian citizenship for her marriage and the Record is likewise as equally clear that she did not fulfill the requirements of taking an oath to obtain it. As to petitioner's applying for Italian citizenship—is this one fact, in and of itself, sufficient to conclude a naturalization status? This must be answered in the negative; the document (Ex. 1) is nothing more than what its name implied, namely an application. Under no conceivable circumstance could this one act alone alter petitioner's American citizenship. Thus it must have been so reasoned by this Court when the words *"and by obtaining Italian citizenship"* were added to the propounded question. The last added words are crucial for it is therein that the Court assumes as a fact and as part of its major premise that petitioner "otbained Italian citizenship."

III.

PETITIONER DID NOT TAKE THE OATH AS REQUIRED TO GAIN ITALIAN CITIZENSHIP OR RENOUNCED HER AMERICAN CITIZENSHIP.

To hold as this Court did, that petitioner became a naturalized Italian citizen, could only come about by this Court's finding in the Record unequivocal testimony or positive proof adduced that the petitioner took the oath as required to gain Italian citizenship. Nothing short of this finding must be made for without this fact established it is impossible to conclude that the petitioner became an Ital-

ian citizen or that she renounced her American citizenship. It must be remembered that the granting of Italian citizenship was not established and to find that petitioner *obtained* naturalization it becomes paramount that petitioner committed certain overt acts to accomplish this, namely:

First: That she renounced her American citizenship.

Second: That she swore allegiance to the King of Italy.

It is respectfully submitted by petitioner that this Court assumed as a fact (the acquisition of Italian citizenship) something which was and can not be found, proven or was conceded. On the contrary, attention is invited to the searching cross-examination made of petitioner relative to her taking of the oath and of petitioner's sworn answer that "the first time I have recited it [Oath] is right now" (R. 10, 20, 21). In response to the question as to whether or not anything happened at the time that would have put petitioner on the alert or apprise her of the fact that she was renouncing her citizenship, petitioner's husband testified that there was nothing and that petitioner did not recite the renunciation of her American citizenship or swear allegiance to the King of Italy (R. 45).

Petitioner contends that her alleged naturalization as an Italian citizen was void and ineffective in its consummation as such upon the following grounds:

1st. That the conceding of Italian citizenship was conditional upon her taking the oath.

2nd. That she did not know that the document (Ex. 2) subscribed by her contained an oath of renouncing her American citizenship or of the swearing of allegiance to the King of Italy (R. 18, 21).

3rd. That she was not requested as therein recited in the document to take the oath as prescribed and required (R. 19).

4th. That she did not as therein recited, pronounce by word of mouth or accede in the renunciation of her American citizenship or swear allegiance to the King of Italy, or do any act knowlingly, intentionally or voluntarily to forfeit her rights as an American citizen (R. 20, 21).

A similar question of the significance to be attached to the mere signature appearing on a foreign oath of allegiance was considered *In the Matter of E———, In Exclusion Proceedings,*[1] decided by the Board in 1943. The facts are these: E——— was born in Montana and when an infant was taken by his father to Canada where his father became a naturalized citizen. E——— later applied for enlistment in Canada and executed an oath of allegiance but which was not attested to by an officer. E——— subsequently applied for admission to the United States as an American citizen. Notwithstanding the fact that his name was signed to the oath, he testified that he did not take the oath of allegiance at that time. In holding that there was insufficient evidence of the intention of E——— to take the oath, the Board held:

> "This statute [the Canadian Act requiring the oath] requires two things to be done, that the oath be taken and it be subscribed to. The appellant did subscribe to the form of oath, but there is nothing on record to indicate that he took the oath. To constitute a valid 'oath,' there must be in the presence of the person

[1]Vol. 1, p. 548 Administrative Decisions Under Immigration and Naturalization Laws of the United States (1940-1943).

authorized to administer it, *an unequivocal act whereby the affiant consciously takes upon himself the obligation of an oath,* * * *. We feel that the act of the appellant in *signing* the form of oath is not the taking an oath within the meaning of Section 2 of the Act of March 2, 1907." (Italics ours.)

The recent case of *In re Gogal*, 75 F. Supp. 268, 270, 271 (1947) considered the matter of an American born taking an oath of allegiance in a foreign army. Petitioner there sought to establish his American citizenship on the ground that he did not knowingly and willingly take the oath. In finding for the petitioner, the Court stated:

> "It is impossible for any person to swear before their God, or affirm, that certain things will be done or not done without *knowing* or *hearing* that to which the oath is being taken. * * *." (Italics ours.)

The nature and consequences of an oath of allegiance was defined in 1872 by Mr. Justice Field when he wrote:

> "The citizen or subject owes an absolute and permanent allegiance to his government or sovereign, or at least until, *by some open and distinctive act*, he renounces it and becomes a citizen or subject of another soverign." *Carlisle v. United States*, 83 U. S. 147, 154. (Italics ours.)

To impute to the petitioner the knowledge her intended husband may have had of the document (Ex. 2) and the serious consequences of her step together with the fact that no oath was administered or of her understanding that her signature was to be appended to an oath, falls far short of the "unequivocal act whereby affiant consciously takes upon himself the obligations of an oath." Would this Court

under like circumstances of one attempting to gain American citizenship hold an oath had been taken? In matters of this import our Court has gone so far as to delve into the subjective intent and has repeatedly held that the oath may not be taken with conscious or latent reservations notwithstanding the actual outward act of taking the oath. *United States v. Kramer*, 226 Fed. 395; *United States v. Haas*, 51 Fed. Supp. 910; and should not be accepted if it appears the applicant does not comprehend the nature and significance of his oath. *In re Boderick*, 63 Fed. 813.

CONCLUSION

It is earnestly petitioned that this Honorable Court reconsider the assumed fact that petitioner was granted Italian citizenship. It is further respectfully submitted that the Record does not establish that petitioner took the oath as required. The burden of proof on these two vital and determinative points was on the Government.

It is therefore respectfully urged that a rehearing be granted on these points and if this Honorable Court should find that the petitioner was not granted Italian citizenship and that petitioner did not take he oath as required, that the Judgment of the United States Court of Appeals for the 7th Circuit be reversed, or that the matter be remanded to the United States District Court for the Western District of Wisconsin for further hearing thereon.

Respectfully submitted,

CARL A. FLOM,
Madison, Wisconsin,
Counsel for Petitioner

CERTIFICATE

STATE OF WISCONSIN }
DANE COUNTY } ss.

Carl A. Flom being first duly sworn, on oath, deposes and says that he is one of the attorneys for the petitioner named in the above entitled cause; that the petition herein presented is submitted in good faith and not for delay.

CARL A. FLOM

Subscribed and sworn to before me
this 24th day of February, 1950.

ROBERT MORTENSEN
Notary Public, Dane County, Wisconsin.
My Commission expires September 6, 1953.

(SEAL)